



EXECUTIVE COMMITTEE MEETING NOTICE/AGENDA

Posted at www.scdd.ca.gov

DATE: February 11, 2014

TIME: 10:00 a.m. – 4:00 p.m.

LOCATION: State Council on Developmental Disabilities
1507 21st Street, Suite 210
Sacramento, CA 95811
(916) 322-8481

Pursuant to Government code Sections 11123.1 and 11125(f), individuals with disabilities who require accessible alternative formats of the agenda and related meeting materials and/or auxiliary aids/services to participate in this meeting should contact Robin Maitino at (916) 322-8481 or email robin.maitino@scdd.ca.gov. Requests must be received by 5:00 pm February 4, 2014.

AGENDA

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1. CALL TO ORDER	M. Kennedy	
2. ESTABLISHMENT OF QUORUM	M. Kennedy	
3. WELCOME/INTRODUCTIONS	M. Kennedy	
4. APPROVAL OF DECEMBER 10, 2013 MINUTES	M. Kennedy	3
5. PUBLIC COMMENTS		
This item is for members of the public only to provide an opportunity to comments and/or present information to the Council on matters not on the agenda. Each person will be afforded up to three minutes to speak. Written requests, if any, will be considered first. The Council will provide a public comment period, not to exceed a total of seven minutes, for public comment prior to action on each agenda item.		
6. MTARS RESPONSE	J. Aguilar	
a. Cover Letter		6
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e. Community Engagement		
f. Other/Next Steps		

7. REVISIONS TO BYLAWS	J. Aguilar	43
a. Membership Committee		
b. State Plan Sub-Committee		
c. Other revisions		
8. UPDATE ON EXECUTIVE DIRECTOR SEARCH PROCESS	J. Aguilar	
9. CLOSED SESSION – PERSONNEL		
Pursuant to Government Code Section 11126(a)(1) the Executive Committee will have a closed session to consider the appointment and/or employment of a public employee.		
10. RECONVENE OPEN SESSION		
Pursuant to Government Code Section 11126.3(f) there will be an announcement of any action(s) taken during closed session.		
11. CONFLICT OF INTEREST POLICY	M. Kennedy	62
12. REGIONAL CENTER WAIVER PROCEDURE	M. Kennedy	65
13. CONTRACT AND PURCHASING MANUAL	M. Kennedy	70
14. ESTABLISH MARCH COUNCIL AGENDA	All	
15. ADJOURNMENT	M. Kennedy	

DRAFT
Executive Committee Meeting Minutes
December 10, 2013

Attending Members

Janelle Lewis
Jorge Aguilar
Molly Kennedy
Ning Yang
Olivia Raynor

Members Absent

Kecia Weller
Ray Ceragioli

Others Attending

Melissa Corral
Nancy Dow
Robin Maitino
Roberta Newton

1. **Call to Order**

Jorge Aguilar called the meeting to order at 2:10 p.m. and established a quorum present.

2. **Welcome and Introductions**

Members and others introduced themselves.

3. **Public Comments**

There were no public comments.

4. **Report of Actions/Recommendations Made by the Joint Executive Committee and Executive Director Search Ad-Hoc Committee Meeting**

Jorge Aguilar reported that two candidates will move forward to the full Council for consideration.

Pursuit to the Council's request, the Committee reviewed the draft salary adjustment letter to CalHR, provided input, and took the below actions to approve the letter.

Motion 1

It was moved/seconded (Kennedy/Aguilar) and carried to request an executive director salary adjustment from level G (\$107,712 - \$120,000) to level C (\$122,424 - \$136,368).

Motion 2

It was moved/seconded (Kennedy/Aguilar) and carried to approve the salary adjustment letter to CalHR as amended by Jorge Aguilar.

5. Review Recommendation by Administrative Committee Regarding Incompatible Activities Policy

It was moved/seconded (Aguilar/Ceragioli) and carried to approve the State Council Statement of Incompatible Activities as amended.

6. Approval Of Program Performance Report (PPR) Report

It was moved/seconded (Kennedy/Ceragioli) and carried to approve the PPR report as amended.

7. FISMA Report

It was moved/seconded (Aguilar/Ceragioli) and carried to approve the FISMA report as amended. (1 abstention)

8. Possible Outreach Event in Southern California

Following the review and discussion of the information provided by Brian Gutierrez (absent), the Committee took no action to approve this request stating that the Committee/Council needed additional information and requested that guidance be given Mr. Gutierrez and how to submit future requests.

9. Pacific Alliance on Disabled Self-Advocates Request

It was moved/seconded (Aguilar/Yang) and carried to deny the request for additional funding. Further, the Committee requested that staff convey the Council's regret for being unable to provide additional funding at this time and to communicate their strong support for PADSA's efforts.

10. **Legal Opinion on Facilitation Services from CalHR**

After reviewing the legal opinion provided by CalHR, the Committee referred this matter over to the Administrative Committee to develop policies/procedures. The Administrative Committee will also consult with SAAC in this matter.

11. **Conflict of Interest Policy and Procedure Review**

After reviewing the September 2011 Regional Center Request for Waiver of COI Criteria Process, a recommendation was made that staff move the process section to the beginning of the document and that the background/ reference section be moved to the end of the document. Additionally, the revised document should be distributed to all area boards and included in every Council and Executive Committee packet that includes a waiver request on the agenda. The Committee referred this matter over to the Administrative Committee for any additional revisions to the edited procedure.

12. **MTARS Report**

It was moved/seconded (Yang/Kennedy) and carried to form a MTARS Ad-Hoc Committee to address the concerns listed in the November 22, 2013 report from the Department of Health and Human Services, Administration on Intellectual and Developmental Disabilities. The Chair of this Ad-Hoc Committee shall be the Chairperson of the Council.

13. **Bylaws Review**

It was moved/seconded (Yang/Aguilar) and carried to table the review of the Bylaws until the next meeting.

14. **Adjournment**

Chair Janelle Lewis adjourned the meeting at 5 pm and announced that the next meeting will be held on February 11, 2014.



State Council on Developmental Disabilities

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STATE OF CALIFORNIA

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February 14, 2014 **DRAFT FOR DISCUSSION -- January 27**

Ms. Sarah Newell, Project Officer
Ms. Rita Stevens, Project Officer
Administration on Intellectual and Developmental Disabilities
Administration on Community Living
Washington, DC 20201

**Subject: California State Council
Response to 2013 MTARS Findings**

Dear Ms. Newell and Stevens,

On November 22, 2013, Interim Commissioner Bishop issued the Monitoring and Technical Assistance Review System (MTARS) report which documented the findings from the review team's site visit of January 2013. The report documents several areas of non-compliance with the Developmental Disabilities Assistance and Bill of Rights Act (DD Act) and informed us that Council would be on "High Risk Status" and cost-reimbursement mode. On December 26, we wrote seeking a delay of implementation of cost reimbursement due to the serious practical issues involved in that process. On January 6, 2014, we submitted a partial response seeking reconsideration of high risk status, as we could demonstrate robust financial controls and assured you of a significant response to full report by the February 14 deadline.

This letter and attachments constitute our full reply to the 2013 MTARS report's findings and the recommendations for improvement of Council functions. The attached summary of planned legislation (Attachment A) represents our plan to bring California statute into full compliance with the DD Act. The attached Corrective Action Plan (Attachment B) responds section by section to all the "compliance findings" of Appendix A of your report. These items are complemented by the extensive information previously submitted on January 6 focusing on our financial oversight and administration. This letter is an important part of our reply, as it gives an overview of the Council's robust and energetic response to both compliance and operational issues.

The Council's work is important to hundreds of thousands of Californians with developmental disabilities and their families. This is a critical time in California, where the Council is in a leadership position on both implementation of the new Employment First Policy (sponsored by the Council) and the recently signed Self-Determination legislation. The Council is working at the state level and in its local communities to address issues of linguistic and cultural competency of services and the equitable distribution of services. The Council's determined

"The Council advocates, promotes & implements policies and practices that achieve self-determination, independence, productivity & inclusion in all aspects of community life for Californians with developmental disabilities and their families."

work to support self-advocacy is bearing fruit. California's State Plan goals are about the people of California and their aspirations for a meaningful life in their home communities.

As we discussed in our letter of December 26, 2013, the cost re-imbursement procedure you instituted takes valuable resources away from the Council's tasks at hand: (1) replying energetically to the MTARS findings and (2) implementing the Council's state Plan. With this full and substantial response, we hope that you will remove the Council from High Risk Status, and continue to work with us in a systematic and transparent fashion.

Legislation

Most of the MTARS compliance findings (MTARS Report, Appendix A) and concerns (MTARS Report Appendix B) are linked to provisions in California statute that conflict with those in the DD Act. These conflicts make implementation of the Act more bureaucratic and difficult. In response, the Council is sponsoring legislation, ABxxxx, which was introduced on February xx, 2014 by Assemblymember Wesley Chesbro. This bill will finally bring California law into full compliance with the DD Act. We believe we can do that and at the same time strengthen the ability of the Council to drive systems change at the state level and respond to the needs of California's diverse local communities. Because this legislation addresses many areas of non-compliance and is central to our response, and the timing of implementation, we discuss it separately here.

Currently the bill contains only intent language. However, we have included (Attachment A) the Council's working summary of proposed changes to state law, which gives a more detailed look at the breadth and depth of the reform proposal. Before submitting detailed language to the Legislature, the Council must educate communities across the state on the need for reform and our vision for the future of Council operations. The Council's work, through its regional offices is held in high esteem in communities across California. To move forward without these communities would break faith with the relationships the Council has formed over the years and lead to an outcry that could derail our reform efforts. Through this public process, we can assure people that the Council will grow stronger from these changes, and that we will better be able to pursue our mission to support people to achieve self-determination, independence, productivity and inclusion in all aspects of community life.

The Council plans an initial round of community forums and listening sessions in February and will take further testimony at the March 20, 2014 Council meeting. The Council plans to take action on the legislative proposal on March 20, so that detailed legislative language can be introduced the following week in time for policy committee hearings in April and eventual signed by the Governor by September 30, 2014.

Budget

As discussed under Council structure and funding, proposed legislation will delete the requirement that the Council fund area boards, and will give the Council full control over funding of its regional operations. Also, our January 6, 2013 submittal demonstrated a vigorous

Council response to earlier budget control lapses, with the re-constituted Administration Committee, which met eight times since the January 2013 MTARS site visit and the issuance of the report. Also, as described in our January 6 submittal, the Council has robust administrative processes for accounting and expenditure controls. As discussed in more detail, the Council not only responded to an earlier audit from the state department of Finance, it asked for and received a more comprehensive audit of Council contracting and procurement practices from the Department of Health care services Financial Audits Branch. Their recommendations led to a work plan for correction that the Council has been overseeing through the Administration Committee.

Hiring Authority

The DD Act stipulates that the Council hires the Executive Director of the Council and the Executive Director hires the staff. Currently several provision of California law interfere with the authority of the Executive Director to hire Council staff. This had led to long-term vacancies for key positions, which has been noted by MTARS visits since 1994. In response, the Brown Administration has agreed to relinquish the appointment authority, established in state law, for any Council staff positions. State law also restricts the hiring authority of the Executive Director with respect to the hiring of directors of the regional offices. The Council's legislation, AB xxxx, will remove these provisions and directly specify that the Executive Director of the Council shall have full hiring authority for Council staff.

Membership

As you noted in the MTARS report, long-term vacancies on the Council result from multiple factors. Our corrective action plan will simplify the appointment process, amend statute to comply with the DD Act, extend Council member terms, and improve communications between the Governor's Office and the Council. For example, the Council is forming a membership committee which will work directly with the Governor's Office to recommend individuals to fill vacant positions and to notify the Governor six months in advance of a pending vacancy. The Council's legislation will also reduce the bureaucratic method of appointments by giving the Governor unfettered power to appoint within simple guidelines (such as geographic, racial and ethnic diversity). For example, in current law, the Area Board recommends to the Governor an individual who must be chosen from among the 5 Governor appointed positions on the Area Board. The Governor does not have to make that appointment, but the Governor does not have the authority to appoint another individual. This and similar restrictions on the Governor's power to appoint will be removed from statute.

State Council Leadership and Activities.

Perhaps the most striking changes will be in the statutory authorities of the Council with respect to our regional offices and the Area Boards on Developmental Disabilities. As we explained during your site visit, the regional offices of the Council are indeed a part of the Council. However, current law gives the regional offices and their local advisory board (the Area Boards) specific authorities independent of the Council. Current statute also requires that the Council maintain those offices within specified geographic boundaries, and requires that the Council

fund those operations. We believe that it is finally time to remove those provisions from state law and complete the transition of our local operations to full Council control. As discussed in detail in the attachments, state law will be amended to give the Council full control over the size and configuration of local offices, which geography they represent, how they are staffed and funded, and how they are involved in and implement the state plan. Statute will also be amended so that the advisory committees to the regional offices are no longer constituted in statute, but will be constituted by the Council, either through bylaws or administratively.

California is not only racially and ethnically diverse and geographically wide ranging but is also the most populous state in the union. As you have acknowledged, we are different than other states, and to be effective we need a local presence. For example, the Council can more wisely promote systems change at the state level by being in touch with what is happening throughout the state. A local presence is also critical for implementation of state level systems change; for example, with regional offices we can help local communities understand the implications of the new Employment First Policy. Finally, a regional presence is needed to promote systems change and coordination at the local level.

We believe that our local communities will not only continue to benefit from our regional offices, but they will benefit MORE, because of improved coordination between the Council and the regional offices. We benefited greatly from the advice your team gave during the site visit on how the Council and its regional operations need to operate more as a cohesive coordinated entity.

As you can see from this response to the 2013 MTARS report, the Council is determined to address long-standing issues of non-compliance with federal law. We believe that the Council will be stronger and the people of California will be better for it.

With this vigorous response, I sincerely urge you to promptly remove the Council from High Risk Status and restore the Council's access to the federal Basic State Grant. We look forward to working with you in a spirit of collaboration through continued monthly reports and quarterly calls until we resolve any outstanding issues.

I would be happy to make myself and our staff available to you and your staff for discussion of this urgent request for a stay on the restrictions pending your review of our upcoming appeal request. I can be reached directly by telephone on my cell at 805-458-1996 or by email at jorgea@wallacegroup.us Please let me know if you have questions or if I can be of any assistance to you in the review of this request.

Sincerely,

Jorge Aguilar
Chairperson

CC: -----

II. ORGANIZATIONAL ADMINISTRATION**II.1 Staff****2013 MTARS Finding**

The Director shall hire, supervise, and annually evaluate the staff of the Council. Sec. 125(c)(9)

The Council Director (not the Governor) should hire Council staff and supervise and annually evaluate them. Instead the:

- Council Director submits hiring recommendations to the Governor and the Governor has the final authority to hire two deputy level staff.
- The Council has the final approval for the hiring of other staff.

California State Council on Developmental Disabilities Response

COUNCIL RESPONSE: The Council agrees with this finding.

CORRECTIVE ACTION: The Council proposes amending state law, the Lanterman Act, to provide that the Executive Director of the Council is the hiring authority for all Council staff. It is the Council's intent to propose substantive revisions to the Lanterman Act to address this and other MTARS findings of noncompliance. The Governor's office has indicated its support for relinquishing hiring authority in order to come into compliance with the DD Act.

STAFF ASSIGNED: Mark Polit, Deputy Director for Policy and Planning; Council's MTARS Committee to oversee process.

TIMELINES: Effective January 17, 2014, Assembly Member Wesley Chesbro agreed to sponsor a bill with intent language: "it is the intent of the Legislature to make statutory changes to Division 4.5 of the Welfare & Institutions Code as it pertains to the operations, structure and responsibilities of the Council. These changes will bring state law into full compliance with federal law, in order to provide for the continued operation of the Council." Please refer to **Attachment B** for an anticipated legislative timeline and outline of draft legislative language. The Council anticipates that the bill will be signed by the Governor in September 2014 and take effect January 1, 2015 session.

III. MEMBERSHIP**III.1 Membership policies****2013 MTARS Finding**

Membership recommendations solicited by Governor from a broad range of organizational sources including non-state agency members of the Council. Sec125(b)(1)(B)

The Council's membership nomination and appointment process has been historically inhibited by state bureaucracy. It is unclear if and how membership recommendations are solicited from a broad range of DD/ID organizational sources and non-state agency members of the Council.

California State Council on Developmental Disabilities Response

COUNCIL RESPONSE: The Council agrees that it is in limited compliance with this finding. In this instance, California state law is consistent with the DD Act. The Lanterman Act, Welfare and Institutions Code (WIC) Section 4521 includes the following provision:

4521(c) Prior to appointing the 31 members pursuant to this section, the Governor shall request and consider recommendations from organizations representing, or providing services to, or both, persons with developmental disabilities, and shall take into account socioeconomic, ethnic, and geographic considerations of the state.

However, the Council has historically been somewhat passive in its involvement in the recruitment of new Council members. Individual Council members may informally recommend that a colleague apply for appointment, but there is no organized process for soliciting their recommendations and submitting them to the Governor's Appointment office as required in Section 125(b)(1)(B). The Governor does proactively seek input from a variety of ID/DD organizations, but that effort is conducted independent of the Council's involvement.

CORRECTIVE ACTION: The Council will amend its bylaws to establish a Membership Committee to recruit, solicit and advise the Governor on appointments to the Council. Its membership will consist exclusively of self-advocates and family advocates who are community leaders and who may or may not be Council members. A minimum of two Committee members will be Council members. Additionally, a representative from the Governor's Appointment Office, selected by the Governor or his/her designee will sit on the Membership Committee. The Committee will meet quarterly at minimum and more frequently as needed. The bylaws will define its membership and responsibilities and will include language in Section 125(b)(1)(B) that the Membership Committee will "coordinate Council and public input to the Governor regarding all recommendations." The Membership Committee will at least quarterly solicit recommendations for candidates via social media, and email/web alerts from among self-advocacy groups, family support groups, the Federal Partners and service providers. The Committee will in turn bring recommendations for appointments to the Council for action. The Chair of the Membership Committee will be charged with submitting the Council's recommendations to the Governor's Appointment Office.

STAFF ASSIGNED: Melissa Corral, Staff Counsel; Chair to make appointments to Committee, consistent with existing bylaws; MTARS Committee to oversee implementation.

TIMELINES: Council to amend Bylaws to create Membership Committee at its March 20, 2014 meeting. Chair to complete appointments to the Committee by May 9, 2014. Membership Committee to hold first meeting in June 2014. Please refer to **Attachment C** for Council's February 2014 updated Bylaws. appointments.

III.1 Membership policies (continued)	2013 MTARS Finding
Members reflect the state's diverse geographic locations, race, and ethnicity. Sec.125(b)(1)(C)	The appointment process for obtaining new Council members has hindered compliance with the DD Act. Currently, SCDD's membership composition does not meet the requirements for geographic, racial, and ethnic diversity.

California State Council on Developmental Disabilities Response

COUNCIL RESPONSE: The Council has historically had several vacancies and currently has five vacancies for positions recommended by the Area Boards. However for the current 15 non-agency members of the Council, there is reasonable ethnic and racial representation (21% Latino, 7% black, 7% Asian). The membership is currently geographically diverse as well.

By design, the Council has historically enjoyed geographic diversity, since 13 seats are filled by representatives from the 13 area boards with catchment areas covering the entire state.

CORRECTIVE ACTION: The newly constituted Membership Committee will take the lead in conducting outreach to unrepresented regions of the state and underserved communities. The Chair of the Membership Committee will solicit from among non-agency Council members, the local advisory committees, self-advocacy leaders and family support groups, especially those whose membership is composed of individuals from traditionally underserved ethnic or racial minority communities. The anticipated revisions to the Lanterman Act will remove the requirement that the Governor appoint a representative from each of the 13 area advisory committees. However, to preserve the geographic diversity that this scheme guaranteed, new language will require that the Governor appoint an individual who resides in each one of the 13 catchment areas that encompass the local area advisory committees. The local area advisory committees may recommend potential candidates, but the Governor retains authority to select the Council membership.

STAFF ASSIGNED: Melissa Corral, Staff Counsel; MTARS Committee to oversee

TIMELINES: As cited above with Membership Committee holding first meeting by June 30, 2014. Based on conversations with the Governor's Appointment staff, we are optimistic that all vacancies will be filled by July 2014.

III.1 Membership policies (continued)

2013 MTARS Finding

The Council has provisions to rotate membership. Sec.125(b)(2)

Each regional office (i.e. Area Board) representative has to be nominated by the governor. Membership rotation has been historically inhibited by the state's bureaucratic appointment process. For example, one regional office has not had representation on the Council for two years.

California State Council on Developmental Disabilities Response

COUNCIL RESPONSE: The Council has historically had several vacancies. However, this largely because the Governor's appointment office has not always been timely in filling vacancies. The requirement that these seats be filled by Governor-appointed representatives of each regional office's board has admittedly complicated the appointment process.

CORRECTIVE ACTION: The anticipated revisions to the Lanterman Act which will remove the requirement that 13 Council seats be designated for 13 area board representatives, promises to streamline the appointment process significantly. The Council intends to also request that statutory language be revised so that a member is appointed to a full three year term. Currently, members are appointed to the unfilled term of their predecessor, which is frequently less than three years. Additional statutory language will be crafted that removes the six year limit on serving on the Council so that members can continue to serve

while awaiting replacement.

appointments.

STAFF ASSIGNED: Melissa Corral, Staff Counsel for activities of the Membership Committee; Mark Polit to oversee the legislative process; both overseen by MTARS Committee

TIMELINES: As cited above, by June 30 2014 for first meeting of Membership Committee. Anticipated revisions to state law will go into effect January 1, 2015. Beginning no later than June 30 2014, via the Membership Committee as its vehicle, it is anticipated that the Council will enjoy a collaborative and shared mission with the Governor's office in constituting the Council.

III.1 Membership policies

2013 MTARS Finding

The Council has provisions that allow continuation of membership until a new member is appointed. Sec.125(b)(2)

The Council did not provide evidence of a policy for allowing the continuation of Council membership until a replacement member could be appointed.

California State Council on Developmental Disabilities Response

COUNCIL RESPONSE: The Council agrees with this finding, as there are conflicting provisions of state law.

In compliance with the DD Act, the Lanterman Act currently states:

4521(g) A member may continue to serve following the expiration of his or her term until the Governor appoints that member's successor.

However, the Lanterman Act also contains a provision which contradicts both the DD Act and Section 4521(g), quoted above:

4521(d) ... In no event shall any member described in paragraph (1) of, subparagraphs (E) and (H) of paragraph (2) of, and paragraph (3) of, subdivision (b) serve for more than a total of six years of service.

CORRECTIVE ACTION: The Council is proposing an amendment to the Lanterman Act to clarify that Council members may continue serving until a new member is appointed. This will occur by deleting the six year limitation from 4521(d).

STAFF ASSIGNED: Mark Polit, Deputy Director for Policy and Planning with oversight by MTARS Committee

TIMELINES: As previously cited, legislation will be introduced no later than February 2014 with the assumption that it will be signed by the Governor in September and go into effect January 1, 2015.

III.1 Membership policies (continued)

2013 MTARS Finding

The Council has a process to notify Governor re: membership and vacancies. Sec. 125(b)(2)

The Council did not provide evidence of a transparent and effective process to notify Governor regarding membership vacancies.

California State Council on Developmental Disabilities Response

COUNCIL RESPONSE: Although a process exists in state law to address vacancies, in practice there have

indeed been long-standing vacancies. The Lanterman Act states:

4521(g) The state council shall notify the Governor regarding membership requirements of the council and shall notify the Governor at least 60 days before a member's term expires, and when a vacancy on the council remains unfilled for more than 60 days.

CORRECTIVE ACTION: The Membership Committee shall propose to the Council a process for beefing up these provisions and the Council will adopt revisions to its bylaws accordingly. This will include: 1) Notifying the Governor more than 60 days in advance; 2) Submitting recommendations to the Governor for appointment; 3) Soliciting assistance from the DSA when vacancies remain for more than four months; 4) Reporting persistent vacancies to AIDD through the PPR process; 5) Soliciting technical assistance from AIDD when persistent vacancies exist.

/A

STAFF ASSIGNED: Melissa Corral, Staff Counsel, with MTARS Committee overseeing process

TIMELINE: Membership Committee to propose revisions to bylaws by December 31, 2014.

III.2 Membership requirements	2013 MTARS Finding
<p>60% of membership represent individuals with DD in the following categories: Sec.125(b)(3); Sec.125(b)(5)</p> <ul style="list-style-type: none"> • 1/3 individuals with DD • 1/3 parents and guardians of children with developmental disabilities or immediate relatives of guardians of adults with developmental disabilities • 1/3 combination • At least one is immediate relative or guardian of an individual with developmental disabilities who resides or previously resided in an institution or an individual with developmental disabilities who currently/previously resided in an institution in the State. <p>Sec.125(b)(6)</p>	<p>Historically the Council has had long term vacancies. Several membership rosters have been submitted since last year and four membership vacancies were filled just prior to the on-site monitoring visit. An updated membership roster is requested as part of the FY14 State Plan Amendment to AIDD to ensure compliance.</p>

California State Council on Developmental Disabilities Response

COUNCIL RESPONSE: The Council has historically had several vacancies.

CORRECTIVE ACTION: At present, the Interim Executive Director and the Council Chair are the primary contacts with the Governor's Appointment Office. That relationship, while cordial, is passive on the part of the Council. In other words, the Governor notifies the Council when an individual has been selected for appointment; the Council does not assertively recommend candidates. With the creation of the Membership Committee, we foresee a two way street, wherein the Council will actively involve itself in seeking out and promoting candidates for the Governor's consideration. The Chair of the Membership Committee and the staff assigned to support that Committee (Staff Counsel) will be working with the Governor's Office to rapidly fill existing vacancies. An updated membership roster was submitted as part of the FY14 State Plan Amendment. It should also be noted that the Governor's Assistant Appointment Secretary, Sarah Greenseid, sits on the MTARS Committee with the commitment of the Governor's office to ensure the state's compliance with the DD Act.

STAFF ASSIGNED: Roberta Newton, Interim Executive Director, until Membership Committee is established. Staff to Membership Committee, Melissa Corral, will take lead thereafter.

TIMELINES: Immediate and ongoing, calls to Governor's office bi-monthly. Council members, staff and area advisory members will be informed of an aggressive campaign to recruit new members via an email to be disseminated by February 28, 2014.

IV. PROGRAM ADMINISTRATION

<i>IV.1. Five Year State Plan</i>	<i>2013 MTARS Finding</i>
<p>The plan shall focus on Council efforts to bring about the purpose of this subtitle, by specifying 5-year goals, as developed through data driven strategic planning, for advocacy, capacity building, and systemic change related to the areas of emphasis, to be undertaken by the Council. Sec.124(c)(4)(A)</p>	<p>There was inadequate evidence that the:</p> <ul style="list-style-type: none"> • Council engages in data-driven strategic planning to develop the State Plan and takes the primary role in the planning process. • State Plan is the Council's Plan and that activities are undertaken by the Council versus the State Plan being one that is configured by and for the Area Boards. • Council is free from state interference in the development of the State Plan. The state's DD agency awarded the Council two contracts: (1) Client Rights Advocacy and (2) Volunteer Advocacy Services. This state supported work is documented in the Goal 2 in the Council's State Plan which states: "local offices provide assistance that include systems navigation, technical assistance, attendance to Individualized Education Plan meetings and assistance with due process". The review team heard more about these two projects during interviews and public forum testimony than any other Council supported activity. While AIDD does not question

the merit of the projects and the quality of the work being done by Council staff, it raises serious questions about whether the state is directing the Council's State Plan or whether the Council is developing the State Plan.

California State Council on Developmental Disabilities Response

COUNCIL RESPONSE: In developing the California State Council State Plan, the Council is very unique and fortunate in having 13 local offices placed throughout the State. Compared to other states, California is an exceptionally large and diverse State with the 8th largest economy in the world. Further, because of the vast size and complexity of the State, the California State Council developed a unique, comprehensive, data-driven strategy to gather information in developing the State Plan. In past Plan development cycles, the Council relied on organizing public meetings which drew sparse audiences to a few central locations. Notwithstanding the richness of that material, it was limiting and did not utilize the vast knowledge each of our regional offices had of their local communities.

The regional offices (a.k.a. Area Boards) of the Council developed local needs assessments, utilizing the skills and insights of their advisory board members, as well as the catchment area communities at-large. Many of the regional offices have exceptional working relationships with local government, school districts, and providers of direct services, giving the regional office a unique perspective into local needs.

The **Area Board Implementation Guide** assisted each of our local offices in focusing their energy and identifying the needs of their community. The process included a number of locally based public forums, which provided additional input to the work of the staff and volunteers who assisted the local offices in carrying out the identified local needs. It was this process repeated across each catchment area that then assisted the Council in development of the State Plan. This was the first time that large number of local citizens had the opportunity to truly provide significant input into the development of the State Plan.

The richness of information was extraordinary and provided the Council exceptional insight, which was then integrated and focused by the **Strategic Planning Sub-Committee**. The State Plan that was ultimately developed and submitted reflected data that was collected throughout the state. The job of the Strategic Planning Sub-Committee and the Council was to make sense of the data; to quantify and then establish measurable goals and outcomes.

The Council has never produced a plan that so accurately captured the thoughts and insights in such a meticulous and comprehensive manner. Each community across the state had the opportunity to participate in the development of the current State Plan with exceptional responsiveness to rural and urban areas, as well as the cultural diversity of California.

Please see **ATTACHMENT A** for documentation of the State Plan development process, including agenda/minutes of Strategic Planning Subcommittee

CORRECTIVE ACTION: As described in greater detail in the subsequent Section on Program Performance Report, the Council previously had a Strategic Planning Sub-Committee which oversaw the development of the 5 Year State Plan. That committee went dormant when the Planning Specialist position became vacant in 2011. As described in the later section, the Council intends to reconstitute the re-named State Plan Subcommittee to both oversee implementation of the current State Plan, recommend State Plan Amendments as necessary, and begin planning for the next 5 Year State Plan. It will be the job of the State Plan Sub-Committee to present to the Council at each Council meeting a document that demonstrates the Council's progress toward the specific goals and objectives.

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STAFF ASSIGNED: Mark Polit, Deputy Director for Policy and Planning; Chair to appoint State Plan Sub-Committee members; State Plan Sub-Committee reports to Executive Committee; MTARS Committee to ensure timely actions taken.

TIMELINES: Chair to appoint members of State Plan Sub-Committee by April 1, 2014. The sub-committee will meet quarterly with its first meeting to occur no later than June 30, 2014

/A

RESPONSE REGARDING THE COUNCIL'S TWO CONTRACTS (BULLET 3)

Council staff evidently gave confusing information when discussing the two state contracts (actually, Interagency Agreements) held by SCDD as the AIDD team's understanding of the nature of the two contracts is inaccurate. . To clarify, the Council has two contracts with DDS: one contract is to provide both Client Rights Advocacy and Volunteer Advocacy Services (CRA/VAS), solely to the 1383 residents of California's state developmental centers. The second contract is to administer the National Core Indicators surveys statewide, known in California as the Quality Assurance Program.

The references made in the Finding regarding the outpouring of support for Goal 2 activities, are actually references to the advocacy, collaboration, training, and outreach that is conducted in the community by the staff that are housed in our local area offices. These activities are quantified in the State Plan as Objectives 2a), 2b), and 2c). The CRA/VAS contract is referenced in Objective 2d) of Goal 2: "The Council will collaborate with federal developmental disability partners and other key stakeholders to protect the rights of residents in Developmental Centers and other large facilities. The Council will be involved in the planning and implementation of any closure process of a Developmental Center."

The CRA/VAS contract is limited in scope to providing advocacy and training to the residents, families and staff of California's five state-operated facilities, including self-advocacy assistance. There are only twelve Council employees throughout the state who work on the CRA/VAS contract and they are solely assigned to that contract and solely paid via that contract. These funds are identified in the Budget Section of the PPR as non-federal funds.

It should be noted that the Council sought this contract as a means for having a voice in the state's policies and long term service planning especially as it relates to the planned closure of California's remaining institutions.

In 1997 legislation was passed to address a persistent conflict of interest in the provision of client's rights advocacy services for individuals served in the community by the network of regional centers and the individuals who lived in state-run institutions (see detail below). In response to this legislation, California's P & A agency sought and was awarded a contract to provide client rights advocacy services to the over 270,000 individuals who reside in the community while the State Council was awarded a far smaller contract to provide these services to state developmental center residents, families and staff. As a result of our role in the developmental centers, the State Council has been a front row player in the closure of three state institutions and implementation of innovative new community living models.

4433. (a) The Legislature finds and declares all of the following:

(1) The State of California accepts its responsibility to ensure and uphold the rights of persons with developmental disabilities and an obligation to ensure that laws, regulations, and policies on the rights of persons with developmental disabilities are observed and protected.

(2) Persons with developmental disabilities are vulnerable to abuse, neglect, and deprivations of their rights.

(3) Clients' rights advocacy services provided by the regional

centers, the advocacy services currently provided by the department at the state hospitals, and the services provided by the department's Office of Human Rights may have conflicts of interest, or the appearance of a conflict of interest.

(4) The services provided to individuals with developmental disabilities and their families are of such a special and unique nature that they cannot satisfactorily be provided by state agencies or regional centers and must be contracted out pursuant to paragraph (3) of subdivision (b) of Section 19130 of the Government Code.

(b) (1) To avoid the potential for a conflict of interest or the appearance of a conflict of interest, beginning January 1, 1998, the department shall contract for clients' rights advocacy services. The department shall solicit a single statewide contract with a nonprofit agency that results in at least three responsive bids that meet all of the criteria specified in paragraph (2) to perform the services specified in subdivision (d). If three responsive bids are not received, the department may rebid the contract on a regional basis, not to exceed three regional contracts and one contract for developmental centers and headquarters.

(2) Any contractor selected shall meet the following requirements:

(A) The contractor can demonstrate the capability to provide statewide advocacy services to individuals with developmental disabilities living in developmental centers and in the community.

(B) The contractor does not directly or indirectly provide services to individuals with developmental disabilities, except advocacy services.

(C) The contractor has knowledge of the service system, entitlements, and service rights of persons receiving services from regional centers and in state hospitals.

(D) The contractor can demonstrate the capability of coordinating services with the protection and advocacy agency specified in Division 4.7 (commencing with Section 4900) and the area boards.

(E) The contractor has not provided any services, except advocacy services, to, or been employed by, any regional center or the Association of Regional Center Agencies during the two-year period prior to the effective date of the contract.

(c) For the purposes of this section, the Legislature further finds and declares that because of a potential conflict of interest or the appearance of a conflict of interest, the goals and purposes of the regional center clients' rights advocacy services, the state hospitals, and the services of the Office of Human Rights, cannot be accomplished through the utilization of persons selected pursuant to the regular civil service system, nor can the services be provided through the department's contracts with regional centers.

Accordingly, contracts into which the department enters pursuant to this section are permitted and authorized by paragraphs (3) and (5) of subdivision (b) of Section 19130 of the Government Code.

(d) The contractor shall do all of the following:

(1) Provide clients' rights advocacy services to persons with developmental disabilities who are consumers of regional centers and to individuals who reside in the state developmental centers and hospitals, including ensuring the rights of persons with developmental disabilities, and assisting persons with developmental disabilities in pursuing administrative and legal remedies.

(2) Investigate and take action as appropriate and necessary to resolve complaints from, or concerning persons with, developmental disabilities residing in licensed health and community care

facilities regarding abuse, and unreasonable denial, or punitive withholding, of rights guaranteed under this division.

(3) Provide consultation, technical assistance, supervision and training, and support services for clients' rights advocates that were previously the responsibility of the Office of Human Rights.

(4) Coordinate the provision of clients' rights advocacy services in consultation with the department, stakeholder organizations, and persons with developmental disabilities and their families representing California's multicultural diversity.

(5) Provide at least two self-advocacy trainings for consumers and family members. (our emphasis)

(e) In order to ensure that individuals with developmental disabilities have access to high quality advocacy services, the contractor shall establish a grievance procedure and shall advise persons receiving services under the contract of the availability of other advocacy services, including the services provided by the protection and advocacy agency specified in Division 4.7 (commencing with Section 4900) and the area boards.

(f) The department shall contract on a multiyear basis for a contract term of up to five years, subject to the annual appropriation of funds by the Legislature.

(g) This section shall not prohibit the department and the regional centers from advocating for the rights, including the right to generic services, of persons with developmental disabilities.

For a clearer understanding of the scope of work and duties of staff assigned to this contract, please refer to **ATTACHMENT D** which consists of the CRA/VAS Interagency Agreement. Additionally, **ATTACHMENT E** contains the staff roster for the project.

CORRECTIVE ACTION: The Council welcomes AIDD's guidance on the appropriateness of our work on this contract. It should be noted that the existence of this state contract has in no way deterred the Council from taking a variety of policy positions, even when critical of the administration and including criticism of the state's continued reliance on institutional settings. Most recently, the Council was an invited participant on the 2013 Task Force on the Future of California's State Developmental Centers.

STAFF ASSIGNED: Roberta Newton; MTARS committee to oversee

IV.1. Five Year State Plan	2013 MTARS Finding
<p>Plan must include assurances related to:</p> <ul style="list-style-type: none"> ➤ (B) USE OF FUNDS - <i>At the request of any State, a portion of such funds provided to such State under this subtitle for any fiscal year shall be available to pay up to 1 /2 (or the entire amount if the Council is the designated State agency) of the expenditures found to be necessary by the Secretary for the proper and efficient exercise of the functions of the designated State agency, except that not more than 5 percent of such funds provided to such State for any fiscal year, or \$50,000, whichever is less, shall be made available for total expenditures for such purpose by the designated State agency</i> ➤ (C) STATE FINANCIAL 	<p>The Council did not provide adequate evidence that the plan is supported by the assurances in Section 125(c)(5)(B - D) and (K - L).</p> <p>Regarding (B) <i>Use of Funds</i>, the review team could not draw any conclusions about the Council based on the information provided about the expenditures for the DSA. It was stated during interviews that:</p> <ul style="list-style-type: none"> • The DSA charges the Council an indirect rate for the services it provides. • The rate stated by Council staff was in excess of the 5% or \$50,000 limit. • Staff did not know the DSA's indirect policy and no written policy was provided. • The Council is required to pay the indirect rate.

<p>PARTICIPATION.—<i>The plan shall provide assurances that there will be reasonable State financial participation in the cost of carrying out the plan.</i></p> <p>➤ (D) CONFLICT OF INTEREST.—<i>The plan shall provide an assurance that no member of such Council will cast a vote on any matter that would provide direct financial benefit to the member or otherwise give the appearance of a conflict of interest.</i></p> <p>➤ (K) STAFF ASSIGNMENTS.—<i>The plan shall provide assurances that the staff and other personnel of the Council, while working for the Council, will be responsible solely for assisting the Council in carrying out the duties of the Council under this subtitle and will not be assigned duties by the designated State agency, or any other agency, office, or entity of the State.</i></p> <p>➤ (L) NONINTERFERENCE.—<i>The plan shall provide assurances that the designated State agency, and any other agency, office, or entity of the State, will not interfere with the advocacy, capacity building, and systemic change activities, budget, personnel, State Plan development, or plan implementation of the Council, except that the designated State agency shall have the authority necessary to carry out the responsibilities described in section 125(d)(3).</i></p> <p>Sec.124(c)(5)</p>	<p>The Council staff stated it does so from two contracts the state awards to the Council.</p> <p>In regards to (C) <i>State Financial Participation</i>, when the review team inquired about how the state provides match, there were comments about state contract funds being factored in but there was a tremendous lack of clarity on this matter.</p> <p>In regards to (D) <i>Conflict of Interest</i>, the majority of the Council is comprised of non-agency representatives who are Area Board representatives. There are 13 Areas Board representatives on the Council and 7 “at large” members. The Area Board representatives sit on the State Council and on the Advisory Committee to the Area Boards. This dual role presents a conflict of interest and gives the appearance of a conflict of interest. The Council does not have a policy or procedure to address this.</p> <p>In regards to (K) <i>Staff Assignments</i>, it appears that Council staff is carrying out work directed by the state and not necessarily the Council through the state funded Client Rights Advocacy and Volunteer Advocacy Services projects. Through these contracts, Council staff conducts assessments and monitoring in the State’s developmental centers. Providing direct services is outside the purview of the Council’s responsibilities. Furthermore, this work is in support of the two state contracts and therefore directs the work carried out by Council staff located in the regional office. Since it is work created by and for the state, it raises questions as to whether the Council staff is assisting the Council or the state.</p>
	<p>In regards to (L) <i>Noninterference</i>, it is very difficult to conclude whether the Council is free of interference:</p> <ul style="list-style-type: none"> • To avoid duplication, issues related to interference with the budget process are described under <i>VI.1 Fiscal Requirements</i> • To avoid duplication, issues related to interference with personnel are described under <i>II.1 Staff</i> • To avoid duplication, issues related to interference with State Plan development are described in the Section above <i>IV.1. Five Year State</i>

	<i>Plan.</i>
California State Council on Developmental Disabilities Response	
<p>COUNCIL RESPONSE: The Council agrees that there has been a lack of clarity on the two issues of (B) Use of Funds; and (C) State Financial Participation. With the staff turnover experienced in recent years, there is a lack of institutional knowledge. This is admittedly an area in which the Council would appreciate technical assistance.</p>	
<p>To clarify our current practice, the Council has an Interagency Agreement (IA) in the amount of \$390,000 with the California Department of Social Services (CDSS) to provide administrative support services in the areas of accounting; some IT support; some human resources services; procurement; and contracting. We have assigned \$50,000 of these costs to the DSA functions. However, the scope of administrative work performed by the Department of Social Services far exceeds the required duties of the DSA. For example, the Council does not have state-approved delegated purchasing authority. Its purchasing authority is held by DSS and therefore, all contracts are encumbered by DSS on behalf of SCDD. We believe it is appropriate for the Council to assign some of the cost of our CDSS Interagency Agreement as General Management costs. If not for this Interagency Agreement, the Council would have to bring these functions in-house, at substantially greater cost. The \$390,000 CDSS IA is broken down as follows:</p>	
<p>\$50,000.....DSA Functions</p>	
<p>\$136,960..... Council General Management costs</p>	
<p>\$92,040.....State-funded CRA/VAS contract paid</p>	
<p>\$111,000.....State-funded QA (NCI) contract paid</p>	
<p>The CDSS states that the cost of providing the support services as outlined in the IA, far exceeds the \$390,000 paid by SCDD. According to the CDSS, the services more accurately cost \$620,000. Therefore, the difference between the \$620,000 worth of support services provided to the Council versus the \$390,000 paid for these services, represents California's State Financial Participation.</p>	
<p>Please see ATTACHMENT F for a copy of the CDSS Interagency Agreement as well as supplemental information from CDSS on this matter.</p>	
<p>Additionally, it should be noted that, to a very large degree, the California Council implements its State Plan through staff activities. In Fiscal Year 2013, the Council awarded \$580,414 in grants, which represents 9% of our allotment. The grantees did provide matching/in-kind funds for a total match of \$284,276 or nearly 50% of the funds awarded. Please see ATTACHMENT G for (FY 2013)Cycle 35 Grants and the current (FY 2014) Cycle 36 Grants.</p>	
<p>CORRECTIVE ACTION: The Council welcomes input from AIDD to ensure that we are properly addressing assurances.</p>	
<p>STAFF ASSIGNED: Roberta Newton, Interim Executive Director; Administrative Committee to oversee and report to MTARS Committee</p>	
<p>Response Regarding (D), Conflict of Interest</p>	

The California State Council on Developmental Disabilities (Council) is comprised of 31 members; 11 members are agency representatives, 7 members are statewide, or “at-large” and 13 members are from the local area advisory boards.

Of the total membership, two sets of Council members hold dual appointments: 1) the agency members and, 2) the local area advisory board members. Both sets of members are required pursuant to either federal (42 USC 15001) and/or state (Welfare and Institutions Code Section 4520) law.

The agency members have dual appointments by virtue of their appointment by the Governor to their State government position first and secondly by virtue of their appointment to the Council. The area advisory board members are appointed first by the Governor to the area advisory board and secondly to the Council.

Although a dual appointment may create a perception of an incompatible, overlapping or conflictive appointment pursuant to common law doctrine, it is clear that federal and state law may supersede common law and authorize the holding of dual appointments by statute.

For California, the Legislature expressly determined that the planning activities of the Council depends on the direct involvement of Council members familiar with the structure and operation of services and programs for persons with developmental disabilities in areas throughout the state. The Legislature found this necessary due to the expansive geographical size of the state of California and its complexity and diversity. Secondly, the expertise and participation of agency representatives assists in the successful implementation of the State Plan. To this end, WIC 4525 expressly exempts Council members from the local area advisory boards and agency representatives from the conflict of interest criteria.

CORRECTIVE ACTION: Based on the many findings relating to membership policies, as previously reported, the Council has begun to develop legislative language to amend the Lanterman Act. This will result in an appointment process that eliminates the perceived conflict of interest. As previously noted, the anticipated revisions to the Lanterman Act will remove the requirement that the Governor appoint a representative from each of the 13 area advisory committees. However, to preserve the geographic diversity that this scheme guaranteed, new language will require that the Governor appoint an individual who resides in each one of the 13 catchment areas that encompass the local area advisory committees. The local area advisory committees may recommend potential candidates, but the Governor retains authority to select the Council membership.

STAFF ASSIGNED: Mark Polit, Deputy Director for Policy and Planning for legislative action; Melissa Corral, Legal Counsel to confer on Conflict of Interest provisions; MTARS Committee to oversee.

TIMELINES: As previously noted, legislation is expected to be effective January 1, 2015.

<i>IV.2 State Plan Implementation</i>	<i>2013 MTARS Finding</i>
The Council shall implement the State Plan by conducting and supporting advocacy, capacity building, and systemic change activities Sec.125(c)(5)	The Council’s 5-year plan implementation does not promote advocacy, capacity building, and systemic change at the <u>state level</u> . As discussed above, the review team heard more about the two state funded projects

implemented by the Area Boards. Since so much attention was paid to the two state funded projects, the review team did not hear about a coherent set of activities implemented by the Council at the state level.

The Council is providing direct services through the two state contracts. This type of activity is outside the purview of the Council's responsibilities and appears to overlap with P&A functions.

California State Council on Developmental Disabilities Response

COUNCIL RESPONSE: The Council believes it is in compliance with this provision of Sec.125(c)(5).

The review team focused a great deal on the relationship between the Council's local offices and the Council. As such, we did not fully explore our state level work on advocacy, capacity building, and systemic change. Apparently, Council staff did not adequately communicate the state level work the Council performs. We will discuss some of this information below and add information on activities since the review team has visited.

In 2013, the Council sponsored AB 1041, Employment First Policy, and played a major role in SB 468, Self-Determination, a bill sponsored by Disability Rights California and Autism Society of Los Angeles. On October 10, 2013, Governor Brown signed both bills into law, creating a turning point in how California delivers services and supports to people with IDD. Combined, these bills may be the most significant change in California law affecting people with IDD since the passage of the Lanterman Act in 1969. These bills are fundamental to the purpose of the DD Act in promoting self-determination, independence, productivity, and integration and inclusion in all facets of community life. Also, as the DD Act envisioned, the Council worked very closely on both bills with some of our federal partners (DRC on SB 468 and the Tarjan Center, UCLA, on AB 1041). It is rare for any state Council to have such a profound impact on state level policy in a single year.

With respect to state-level capacity building, for example, the Council worked with self-advocacy leaders to establish the Statewide Self-Advocacy Network (SSAN). The SSAN is supported by the Council, but will eventually be an independent 501(c)(3) organization. It is comprised of representatives from each of the local area offices, the Council's Self-Advocacy Advisory Committee, each of the four federal DD partners, the California Foundation for Independent Living Centers, and People First of California. This is a dynamic group of self-advocacy leaders from around the state that is focused on influencing state level policy and building self-advocacy capacity and leadership at the local level. Other examples of state level capacity building would include our sponsorships of major statewide conferences, an annual major contribution to the Youth Leadership Forum, which trains self-advocacy leaders of the future, and the Council's Program Development Grants.

With respect to state level advocacy, the PPRs submitted annually contain significant information on the extent of state level advocacy. Since the review team visited in January, the Council wrote 308 letters (including 240 to state legislators, 10 to the Governor, and 57 to the California Congressional Delegation and US Senators). In addition, the Council had over 145 legislative, Congressional and administration

meetings.

Besides AB 1041, Employment First Policy, the Council sponsored two other bills: (1) The Council worked closely with Autism Speaks to co-sponsor SB 163, which sought to protect the rights of families to be reimbursed for insurance co-pays and deductibles for autism therapies approved by the state. That bill was defeated. The Council will continue to work with autism advocates to seek protection for those rights. (2) The Council also co-sponsored SB 577 which would create a new service category for job exploration and discovery. This bill is an important part of the strategy to remove barriers to the employment of people with developmental disabilities in integrated competitive employment. This was a two-year bill, passed out of the Senate in January 2014, and is now being considered by the Assembly.

At the federal level, the Council opposed the proposed sequestration cuts to health and human services and wrote the entire California Congressional delegation, informing them of the potential impact on individuals with developmental disabilities and their families. The Council also opposed proposed federal cuts to federal health programs, such as Medicaid. Council staff visited and spoke with staff and members in 15 congressional offices.

With respect to systems change, the Council has been a leading advocate for the last six years for making integrated competitive employment an option for people with developmental disabilities in the state. For example, during this time, the Council sponsored six pieces of employment related legislation. Three of these were signed into law: (1) SB 1270 (2006) authorized the Council to conduct extensive public meetings with stakeholders, consumers, and family members to recommend to the Legislature and Governor steps to increase integrated employment options and more individualized day services. (2) In 2009, at the Council's request, AB 287 established the Employment First Committee within the Council that serves as a forum for all relevant departments and stakeholders to meet and develop strategies to improve employment outcomes. (3) In October of 2013, the Governor signed AB 1041, the Employment First Policy. In part because of the Council's work over the years, this Employment First Policy was not just an executive order or a statement by the department, but represents a consensus view of the DD stakeholder community.

Also with respect to systems change, the Council has played a key role, since 1998, in development of the Self-Determination option in California. The area boards have been partners with the regional centers in implementation of the five Self-Determination pilots. They staffed the pilot advisory committees at the local and state level. The Council contributed significantly to the first Self-Determination bill in 2011 and to the legislation that was signed into law this year.

Beside these highlights, the Council is active in most of the key state level policy forums affecting people with IDD. The Council is a lead agency in California Employment Consortium for Youth (CECY), a project of national significance funded by AIDD. The Council convenes the Employment First Committee which complements the work of CECY in providing a forum for key stakeholders and departments to address barriers to employment of people with IDD. The Council was recently represented on the Secretary's "Future of the DCs Task Force", which made recommendations supported by the Administration for the downsizing and closure of the DCs and the development of a new generation of community services for people with high behavioral needs. We are represented on the ODEP Vision Quest state team comprised of key department, academic and advocacy representatives. We participate in a cross-disability collaboration

between leaders of the Tarjan Center and Councils and Committees with statutory responsibilities for the employment of people with disabilities. We participate in stakeholder workgroups convened by the department on state budget and, currently, Self-Determination. We have participated for the last 12 years in broad stakeholder collaborations within the I/DD advocacy and stakeholder communities (The Community Imperative Strategy Group and the Lanterman Coalition). And finally, the Council has a strong internal policy structure with a Deputy Director of Policy and planning, policy support staff, and a Legislative and Public Policy Committee that usually meets 8 or 9 times per year and makes recommendations to the Council on legislation, policy, regulation and state budget issues.

While there is already a great deal of activity, we are challenged to have a much larger influence and more effectively drive state level policy on a broader scale. The need for systems change is enormous and failure to respond to that challenge means lost opportunities for over a quarter of a million people with IDD and their families. We take our responsibilities seriously. We are staffing up vacant legislative/policy support positions, attempting to bring in new subject area expertise. We are also increasing the exchange of information between headquarters and regional offices. We appreciated the MTARS' team suggestions for improved work with the regional offices.

Please refer to **Attachments H and I** for further information on the Council's self-advocacy activities and its most recent Employment First Report, which is disseminated to the Legislature and the Governor.

CORRECTIVE ACTION: The newly reconstituted State Plan Sub-Committee, which will hold its first meeting by June 30, 2014, will develop a template that captures data on state plan implementation at both the local and statewide level. It will be distributed on at least a quarterly basis to the full Council and utilized to complete the PPR.

/ASTAFF ASSIGNED: Mark Polit, Deputy Director for Policy and Planning

TIMELINES: Starting no later than June 30, 2014 and quarterly thereafter.

V. EVALUATION AND REPORTS

<i>Program Performance Report</i>	<i>2013 MTARS Finding</i>
<p>The Council annually prepares and transmits to the Secretary a report containing information about the progress made in achieving the goals. The report includes:</p> <ul style="list-style-type: none"> • Extent to which each goal of Council was achieved. Sec.125(c)(7)(A) • Description of strategies that contributed to achieving goals. Sec.125(c)(7)(B) • Extent to which each goal was not achieved, describes factors that 	<p>Overall the Council's Program Performance Report does not specifically describe how each Area Board is contributing to State Plan implementation. Because there are 13 regional offices implementing different parts of the Council State Plan, it is difficult to determine how State Plan achievement is being measured and evaluated.</p> <p>Some Area Boards referenced using "mini-plans" to document which parts of the Council State Plan they were implementing. Other Area Boards did not provide evidence of having "mini-plans". Without consistent use</p>

impeded goal achievement. Sec.125(c)(7)(C) • Separate information on self-advocacy goal. Sec.125(c)(7)(D)	of Area Board "mini-plans" or some other tool it is unclear how the Council can assess progress made in achieving goals.
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California State Council on Developmental Disabilities Response

COUNCIL RESPONSE: While it is certainly true that the Council's Area Board offices contribute a great deal to the implementation of the State Plan, the Council is cognizant that it is the Council's State Plan, not the Area Boards'. It is also true that with 43 employees in 13 regional offices, plus an additional 4 program staff at Headquarters, all of whom carry out activities to advance the State Plan, the compiling of data for the Program Performance Report (PPR) is challenging. We are further hampered in that the position of Planning Specialist has been vacant for two years. The Council formerly had a Strategic Planning Committee which oversaw the development of the State Plan and which should oversee the ongoing progress in implementing the State Plan. When the Planning Specialist position became vacant, the Strategic Planning Committee went dormant. In 2013, the Council acted to reinstate a re-named State Plan Subcommittee but it has not yet convened.

For the 2012 PPR, California used DD Suite for the first time. All program staff were given access to DD Suite and each staff entered their activity narratives directly. Further, staff were not held to a specific schedule for reporting activities and outcomes. As a result, the PPR lacked continuity and in fact resembled a crazy quilt. This year we employed a different approach. We developed an Activity Form which all program staff use for each distinct activity. The Activity Reports are turned in to the Deputy Director for Policy and Planning on a bimonthly basis (per the timeline structure of DD Suite) and data-entered into DD Suite by one individual. We believe that this approach has resulted in a far more cohesive PPR. It has also resulted in a far more accurate document with much more impressive outcome numbers.

While the PPR is a comprehensive report of the Council's overall performance in implementing the State Plan, the individual Activity Forms provide the more specific data. It documents who, what, where and when the objective is being implemented. Please see **ATTACHMENT J** for the Activity Form and **ATTACHMENT K** for the 2013 PPR.

CORRECTIVE ACTION: The Council extended a job offer to an individual to fill the position of Planning Specialist on January 23, 2014. It is anticipated that the individual will begin her position on or around March 1, 2014. That person will be responsible for training program staff in reporting obligations and ensuring that the Council is kept abreast of progress made in implementing the State Plan. The State Plan Sub-Committee will be charged with reviewing the individual Activity forms and based on that data, developing a matrix that illustrates the Council's progress in implementing the State Plan. The chart will be provided to the Council at least quarterly. The information will be used by the Program Development Committee (PDC) to assist in determining priorities for grants. It will be used by the Administrative Committee to help guide fiscal priorities.

STAFF ASSIGNED: Mark Polit, Deputy Director for Policy and Planning who will supervise the Planning Specialist; MTARS Committee to oversee.

TIMELINES: The State Plan Sub-Committee will meet beginning no later than June 30 2014 and will convene at a minimum, quarterly. The Chair will appoint the members of this Sub-Committee no later than

April 1, 2014.

An accounting of the manner in which funds paid to the State for a fiscal year were expended. Sec.125(c)(7)(G)

The Council presented several documents that detailed different aspects of how the federal allotment is being spent, but overall the review team could not determine how the budget is developed and executed and how expenditure data is calculated.

VI. FISCAL

VI.1 Fiscal Requirements

2013 MTARS Finding

Council has authority to prepare, approve, and implement a budget to fund programs, projects, and activities. Sec125(c)(8)

The Council did not provide adequate evidence on how it developed or implemented its budget to fund programs, projects, and activities. Council members expressed a strong need for more fiscal transparency and training on state versus federal fiscal policy and the Council's budget development/implementation process.

In addition, the Lanterman continues to include language that is inconsistent with the DD Act, posing challenges for the Council to be in compliance with the federal law:

- The Lanterman Act requires the Council to provide funding to Area Boards.
- The Lanterman Act provisions require the Council to hire staff at the deputy director level thereby interjecting a line item in the Council's budget and limiting its authority to develop a budget.

California State Council on Developmental Disabilities Response

COUNCIL RESPONSE: In this section we address both Sec 125(c)(7)(G): The PPR includes an accounting of the manner in which funds paid to the State for a fiscal year were expended; and Sec 125(c)(8) Fiscal Requirements since both specifically address the Council's role in developing, implementing and tracking its budget.

As the MTARS report later states, at the time of the site visit the Council lacked a Budget Officer (Administrative Service Manager). Further, the previous Executive Director had provided little budgetary information to the Council and had in fact, disbanded the Administrative Committee. The Administrative Committee was re-established in January 2013 and has met ten (10) times in 2013, nearly monthly. Additionally, the Council has received quarterly expenditure reports in 2013 and approved the Council's budget for FY 2014.

In May 2013, Council members received governance training, which included their obligations to approve and monitor the budget, from NACDD technical assistance staff.

At its July 2013 Council meeting, members received training from our Department of Finance (DOF) Analyst on the state budgeting process. Because the California Council implements its State Plan largely

through staff activities and because it also retains a network of 13 regional offices, a large proportion of the federal grant is assigned to personnel and facility costs. Since these are largely predictable costs, much though not all, of the budget is necessarily based on historical expenditures. The budget approved by the Council breaks out costs in two categories: Personal Services and Operating Expenses and Equipment. However, the Administrative Committee reviewed a more detailed line item budget. It was the Administrative Committee that examined the Council's allocation of funds to determine how we would absorb the sequestration cut in FY 13 and into the future. The Administrative Committee recommended and the Council agreed that staff vacancies at the local area offices would not be filled.

Additionally, the re-established Administrative Committee receives programmatic and grant information from the Program Development Committee (PDC) that is used to guide fiscal decisions. The Chair of the Administrative Committee also sits on the PDC.

In 2000, California Department of Finance staff assisted the then independent area boards to devise a cost allocation methodology that would enable them to assign costs by state plan goal. That methodology has been reviewed and revised periodically, most recently with the development of the current state plan. The formula is utilized by the state's primary accounting system, known as **Calstars**. As a result, Calstars provides monthly expenditure data, broken out several different ways, including by state plan goal.

For further insight into the Council's efforts to correct identified fiscal weaknesses and inadequacies, please also refer to the attached Fiscal Integrity and State Manager's Accountability Act report (FISMA Report). The FISMA report is a required biannual report of California state departments to examine the adequacy of the agency's system of internal controls.

ATTACHMENT L: Administrative Committee Roster; **ATTACHMENT M:** Administrative Committee packets of January 2013, February 2013, March 2013, April 2013, June 2013, July 2013, August 2013, October 2013, November 2013, January 8, 2014, January 22, 2014. Quarterly budget reports and Council's approved 2014 budget (two versions, with and without sequestration cut) are included. **ATTACHMENT N:** November Calstars report; **ATTACHMENT O:** FISMA Report

CORRECTIVE ACTION: The Council believes that it has made excellent progress in establishing the necessary oversight that was previously lacking and that the Council members are now well informed about fiscal and budget processes. The Council now receives quarterly expenditure reports, develops and approves the annual budget. Further, the Council recognizes and welcomes that AIDD staff will be providing close supervision of our progress in this area. The Administrative Committee will continue to meet monthly. The Administrative Committee has set the following priorities for its work in 2014:

1. Ensure that all MTARS noncompliance findings of a fiscal/administrative nature are resolved.
2. Take a more active role in developing the Council's 2015 budget.
3. Ensure that the Council has a comprehensive Policies and Procedures Manual.
4. Oversee the process of establishing an MOU with the DSA and evaluating the functions of the DSA.

(Refer to Attachment P: 2014 Administrative Work Plan

STAFF ASSIGNED: Roberta Newton, Interim Executive Director; Administrative Committee to oversee

activities	
TIMELINES: Ongoing, monthly	
VI.2 Fiscal Policies	2013 MTARS Finding
<p>Council has policies to carry out appropriate subcontracting activities. Sec.125(c)(8)(A)</p> <p>Council directs expenditures of funds for grants, contracts, interagency agreements that are binding contracts and other activities authorized by State Plan approval. Sec.125(c)(8)(C)</p> <p>Grantee shall keep records that disclose:</p> <ul style="list-style-type: none"> • Amount and disposition of assistance by recipient • Total cost of project or undertaking in connection with assistance given • Amount of project costs supplied by other sources • Such other records that will facilitate an effective audit <p>Sec.103</p>	<p>The Council did not provide adequate evidence of that it has accurate financial accounting and record keeping:</p> <ul style="list-style-type: none"> • At the time of the on-site visit, the Administrative Services Manager position was vacant and the Council did not have a staff person dedicated to managing the Council's finances. • The Council could only provide limited information on the Council's fiscal policies during the on-site visit pertinent to the requirements in the DD Act. • The Council experienced fiscal impropriety under the previous Executive Director (Board Resource contract) • The state auditor's findings substantiate the immediate need for financial management systems. (Reference: <i>California Department of Finance Management Letter dated August 17, 2012</i>)
California State Council on Developmental Disabilities Response	
<p>COUNCIL RESPONSE: The Council agrees that these findings accurately describe the Council in January 2013, but has since taken a number of strong steps to rectify that situation. We believe that the Council is now on a far stronger fiscal footing and that our policies and practices are transparent to the members, the public, and our business associates.</p> <p>Immediately following her appointment as Acting (now Interim) Executive Director, Ms. Newton sought and received approval from the Council to enter into an Interagency Agreement for the California Department of Health Care Services Financial Audits Branch (FAB) to expand upon the Department of Finance Management Letter's findings, issued August 17, 2012. (Note: Department of Finance (DOF) staff were unavailable to conduct the follow-up.) The DSA was instrumental in securing the services of the FAB audit staff. Specifically, the request was for the audit team to examine all of the Council's practices around contracting and procurement and to provide recommendations. Those recommendations became the basis for an Administrative Work Plan which staff has been implementing and Council has been overseeing, through the Administrative Committee. The Administrative Committee regularly reports to the Council on our progress.</p> <p>In December 2013, staff completed a draft Contract and Purchasing Manual that to a large degree is based upon the manual utilized by the Department of Social Services. The Manual focuses on the Council's procedures for contracting and procurement. The draft Manual was reviewed by the Administrative Committee in January 2014. A second draft will be presented at the February 27, 2014 Administrative Committee meeting. It is anticipated that the Contract and Purchasing Manual will be one element of a</p>	

more comprehensive Policies and Procedures Manual to be developed throughout 2014. Target completion date: December 31, 2014. In July 2013 the Council was able to hire a new Budget Officer (the delay was due to legal procedures associated with the previous budget officer) She has been working closely with DOF staff and our accounting colleagues at the CDSS.

The Council does continue to be hampered by staff management vacancies, especially that of the Chief Deputy for Administration. We have been assured that the Governor's Appointment Office will cooperate with the Council's Interim Executive Director in filling these positions expeditiously.

Please see **ATTACHMENT Q:** Department of Health Care Services Audit Report and **ATTACHMENT R:** 2013 and 2014 SCDD Work Plans and **ATTACHMENT S:** SCDD Draft Contract Manual

CORRECTIVE ACTION: The Council is advertising for a Chief Deputy for Administration and a Deputy for Area Board Operations. The Administrative Committee will review a second draft of the Contract and Purchasing Manual in February 2014 and it will go to the Council for review and approval thereafter. As opportunities arise, administrative staff are attending contract development and oversight classes. For example, the contract analyst is registered for a two day class titled "Monitoring Grants and Cooperative Agreements for Federal Personnel" in April 2014.

STAFF ASSIGNED: Roberta Newton, Interim Executive Director and Administrative Committee

TIMELINES: Refer to Corrective Action above

VII. DESIGNATED STATE AGENCY

<i>VII.2 Responsibilities of DSA</i>	<i>2013 MTARS Finding</i>
<ul style="list-style-type: none"> Receives, accounts for, and disburses funds under subtitle based on State Plan. Sec125(d)(3)(C)(i) Provides the appropriate fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of, and accounting for, funds paid to the state. Sec125(d)(3)(C)(ii) Keeps and provides access to records as Secretary and Council may determine necessary and timely financial reports regarding status of expenditures, obligations, and liquidation by agency or Council, and use of Federal and non-Federal shares. Sec125(d)(3)(D) Provides required non-Federal share. Sec125(d)(3)(E) Assists in obtaining appropriate State Plan assurances and consistency with 	<p>As mentioned above the Council's recent experience with fiscal impropriety under the previous Executive Director (Board Resource contract) and the state auditor's findings substantiates the DSA's need to establish processes, policies, and procedures that promote:</p> <ul style="list-style-type: none"> Accurate receipt, accounting, and disbursement of funds Provision of appropriate fiscal control and fund accounting procedures necessary to assure proper disbursement of, and accounting for, funds paid Access to records as the Secretary and Council may determine necessary Timely development and dissemination of financial reports regarding status of expenditures, obligations, and liquidation by agency or Council, and use of Federal and non-Federal shares <p>The Council does not have a Memorandum of Understanding with the DSA.</p> <p>There was no evidence that the Council has conducted a</p>

<p>state law. Sec125(d)(3)(F)</p> <ul style="list-style-type: none">• Enters into MOU at request of Council. Sec125(d)(3)(G)	<p>formal evaluation of the DSA at any point and time.</p> <p>Several Council staff position and DSA functions appear duplicative. Several DSA functions are performed by Council staff at the central office, specifically in the areas of: contracting, budget, fiscal, and personnel.</p>
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California State Council on Developmental Disabilities Response

COUNCIL RESPONSE: The Council Interim Executive Director has met twice on a formal basis with the DSA in 2013, specifically to discuss DSA functions. There have been several email and phone exchanges as well.

Currently, the DSA is in the process of obtaining final approval from the California Department of General Services on their revised fiscal control and purchasing authority policies and procedures. Based on these policies and procedures, the Council's legal Counsel has adapted it and developed a Contract and Purchasing Manual policy handbook that establishes procedures to ensure accurate and appropriate fiscal controls. As previously noted, that manual is currently under review by the Administrative Committee. Once approved by the Committee, the Full Council will review and approve, most likely at the May 2014 Council meeting. (Please refer to Attachment I)

Council staff members have already attended several trainings regarding their fiduciary obligations as well as proper and standard accounting procedures that will ensure accuracy and dependability in accounting and disbursement of funds.

All policies and procedures ensure that while staff is responsible for the daily work, the full Council retains control over authorizing expenditure of funds in accordance with federal laws, rules, and State Plan goals and objectives.

Neither the Council nor the DSA perceive duplication of Council staff duties with DSA functions. The Department of Social Services' Interagency Agreement (Attachment A) identifies DSA functions in considerable detail. We have attached the Duty Statements for our Contract Analyst, Contract/Procurement Analyst, Personnel Specialist, Budget Officer, and Information Systems Specialist. While it is certainly true that those positions correspond to DSA functions, Council staff coordinate duties with DSA (DSS) staff. They are complementary, not duplicative. For example, the Council's Personnel Specialist is the first line contact with our 65 (federally funded) employees. She handles duties associated with changes in benefits, salary, work hours, promotion or adverse actions. DSA staff have access to the state government mainframe and State Controller's Office and therefore are charged with inputting the transactional changes. Additionally, there are no Council staff who carry out accounting functions. Without direct access to Calstars, the state's multimillion dollar system, we depend on DSS to handle these functions in a more cost effective manner than we could.

ATTACHMENT D: DSS Interagency Agreement; **ATTACHMENT T:** FIVE (5) DUTY STATEMENTS

CORRECTIVE ACTION: The Council agrees that it will develop and enter into a Memorandum of Understanding (MOU) with the DSA during calendar year 2014. This effort will be coordinated by the Administrative Committee. The DSA is represented on the Administrative Committee by Kristopher Kent, Assistant Secretary, Health and Human Services Agency. The Council itself will approve the MOU and it will be signed by the Chairperson.

The Council agrees that it will conduct a formal evaluation of the DSA during calendar year 2014 again through the Administrative Committee. It should be noted, however, that Council management has met periodically with DSA staff to address deliverables, timelines, best practices in IT support and

communication, among other issues.

STAFF ASSIGNED: Roberta Newton, Interim Executive Director, and the Administrative Committee

TIMELINES: Review current DSA functions; review sample MOUs from other states by April 2014 Administrative Committee. Draft MOU and meet with DSA to discuss review by July 2014 Administrative Committee. Meet with DSA and discuss/revise as needed draft MOU by September 2014. Execute and sign MOU at November 2014 Council meeting



State Council on Developmental Disabilities

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ATTACHMENT A - PROPOSED LEGISLATION

For Reform of State Law Regarding the California State Council on Developmental Disabilities
to Conform to the Requirements of the Federal Developmental Disability Act

Introduction

The Administration on Intellectual and Developmental Disabilities (AIDD) is a unit within the Administration for Community Living (ACL) which is part of the United States Department of Health and Human Services Agency. AIDD is responsible for administering the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act). The DD Act provides the federal authority for and funds the DD Network and programs across the nation, including the State Councils on Developmental Disabilities (SCDD's), Protection & Advocacy Systems (P&A's), University Centers for Excellence in Developmental Disabilities Education, Research and Service (UCEDD's) and Projects of National Significance (PNS's).

California has various legal "Codes" that together form statutory law for the state, one of these Codes is the Welfare and Institutions Code (WIC). The WIC contains Division 4.5 that is known as the "Lanterman Act". The Lanterman Act includes various sections intended by the State Legislature to "secure full compliance with the requirements of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 ... which provides federal funds to assist the state ... in establishing a system to protect and advocate the legal and civil rights of persons with developmental disabilities." The Lanterman Act includes the language that establishes the State Council in California with "... authority independent of any single state service agency is needed and is hereby created". This section of the Lanterman Act further describes the structure and functions of the California State Council on Developmental Disabilities and the regional offices known as Area Boards.

In January 2013 representatives from AIDD conducted a site visit to assess California's operations and compliance with DD Act requirements. AIDD issued a "Monitoring and Technical Assistance Review System" (MTARS) report in November of 2013 identifying various Findings including several provisions of state law that conflict with the federal DD Act. Many of these Findings have been cited before in 1994, 2001 and 2006. California has now been designated a "High Risk" status in its award of federal grant funds. Since the federal Act provides the funds to the state for State Council operations, California law must be brought into compliance with the federal law so that the State Council and its regional offices may continue to advocate for people with developmental disabilities and their families. This document summarizes the major concepts for changes to state law that are needed to bring the Lanterman Act into full compliance with the DD Act. Many of these are an important part of the Council's Corrective Action Plan, submitted as Attachment B. Other changes address general concerns of the MTARS.

"The Council advocates, promotes & implements policies and practices that achieve self-determination, independence, productivity & inclusion in all aspects of community life for Californians with developmental disabilities and their families."

Intent Language (submitted to Legislature January 24, 2013)

"The State Council on Developmental Disabilities engages in advocacy, capacity building and systems change activities so that individuals with developmental disabilities and their families are assisted by a comprehensive system of services and supports to achieve self-determination, independence, productivity, and inclusion in all aspects of community life. The Council is funded through an appropriation governed by the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (Public Law 106-402).

"It is the intent of the Legislature to make statutory changes to Division 4.5 of the Welfare and Institutions code, as it pertains to the operations, structure and responsibilities of the Council. These changes will bring state law into full compliance with federal law, in order to provide for the continued operation of the Council."

Legislative Timeline

- January 17:** Assemblymember Wes Chesbro agrees to author legislation.
- January 24:** Intent language submitted to Legislative Counsel
- January 31:** MTARS Committee approves draft legislative concepts and establishes a community engagement plan.
- February:** Initiate community engagement plan and distribute fact sheet. Community engagement continues through passage of legislation and implementation of statutory changes.
- February 21:** Last day to introduce intent bill.
- March 7:** MTARS or Exec Committee finalize summary of legislative proposal to submit to Council (Council packet deadline March 10).
- March 20:** Council takes public input on legislative concepts and approves concepts for legislation.
- March 26:** Council staff submits bill language to Legislature.
- May 2:** Deadline to pass from policy committee to fiscal committee.
- August 31:** Last day for Legislature to pass bills.
- September 30:** Last day for Governor to sign bills.

PROPOSED STATUTORY CHANGES

BELOW ARE DRAFT PROPOSALS PENDING COUNCIL REVIEW/REVISION/APPROVAL

LEGEND:

- ✓ MTARS Committee consensus on concept.
- (()) Blue text in double-parenthesis are notes to the Committee

Structure and Functions of the Council

The federal DD Act funds operations of the Council including those of its staff in regional offices (currently referred to as Area Boards in state law) and the Council's regional offices are fully a part of the Council. These changes seek to remove provisions in current statute that distinguish between the Council and Area Boards and that give separate authority or responsibilities to the local offices that should reside solely with the Council. Further, these changes also clarify the true advisory role of the current local volunteer boards.

1. ✓ ☐ DELETE the requirement in current statute that establishes deputy director positions within Council staff. ADD the Council shall have the authority to establish the Council organizational structure.
2. DELETE the directive in current state statute that mandates the Council to fund the Area Boards. The current language is a state mandate on how the Council is to use its federal funds and is in conflict with the intended independence of the Council in how it uses its funds and carries out its duties. The Council sees the Regional offices as a vital part of its mission to carry out the Council's State Plan (see item 2 below) however this change will eliminate that state mandate and leave the Council in control over internal operations and thereby remove this conflict with the DD Act.
3. INSERT: "In order to ensure that the Council is accessible to and responsive to the diverse needs of consumers and families throughout California, the Council shall maintain regional offices. The Council may determine the number and location of its regional offices."
4. ✓ DELETE the requirement that "to the greatest extent possible" the local offices should participate in the implementation of the State Plan. DELETE that the local offices are "attached" to the Council. Since the local offices are part of the Council, there is no reason for these provisions.
5. INSERT: To ensure that the State Plan is responsive to the needs of California's diverse geographic, racial, ethnic and language communities, the Council shall obtain input from consumers, families and other stakeholders throughout the various regions of California.
6. ✓ Throughout the Lanterman Act, change references to "the area boards" to "the Council", unless referring to the advisory committees.

7. INSERT language from the federal DD Act describing the functions of the Council. Add provisions from current law that give the Council specific authorities, as in item seven below.
8. ✓DELETE Article 6 of Division 4.5, "Area Boards on Developmental Disabilities." ((The MTARS Committee will walk through these sections for responsibilities that need to be retained)) ((Determine if any powers should be given by statute to Council ED)) All relevant language to be moved to Article 5, "State Council Functions," including:
 - a. ✓Clients Rights Advocacy and Volunteer Advocacy Services at the state developmental centers.
 - b. ✓The power to appoint an "Authorized Representative" to advocate for the rights of an individual otherwise without representation.
 - c. ✓The responsibility to conduct public information programs and trainings.
 - d. ✓The responsibility to assist self-advocacy organizations to be formed or strengthened.
 - e. ✓The responsibility to identify the denial of rights or discrimination against people with developmental disabilities and report to and assist the appropriate authorities.
 - f. ✓The authority to review the policies and practices of publicly funded agencies, conduct fact finding, and hold public hearings to receive testimony on its findings.
9. Establish "Regional Advisory Committees".
 - a. DELETE language in current law establishing the appointed Area Boards on Developmental Disabilities.
 - b. REQUIRE that regional offices of the Council establish Regional Advisory Committees which reflect the geographic, disability, and racial, ethnic and language diversity of the local region.
 - c. Further definition of the formation, operation, and function of the Regional Advisory Committees will not be defined in statute and can be accomplished either administratively or through Council bylaws.
 - d. ✓Define the geographic boundaries of the Regional Advisory Committees to match the boundaries of the Council's regional offices, as determined by the Council.
 - e. ✓Define the responsibilities of the Regional Advisory Committees as advising the Council's regional offices on local issues, provide input to the Council for the formulation of the State Plan, and reporting on the State Plan implementation. ((This needs to be enhanced)).

Council Membership

The following changes seek to reduce the complexity of the appointments process and reduce vacancies.

1. DELETE the requirement in current statute that limits a member of the Council to serving no more than six years. This will bring state statute into compliance with the DD Act which requires that a Council member may serve until a replacement is named.
2. CHANGE the length of term of Council members from three to six years.
3. DELETE the requirement in current statute that starts a member's term at a specific date, even when most of that three year term may have elapsed. Instead start a member's three year term upon their appointment, so that they may serve at least the full three years of the term.
4. REQUIRE the Governor to consult with members of the Council, including non-agency members of the Council, as required by the DD Act. (Note that Council is establishing a membership committee in bylaws that will coordinate with the Governor's Office on appointments to Council).
5. REQUIRE the Council to notify the Governor six months in advance of the expiration of a Council members term or immediately if a vacancy is experienced for other reasons.
6. Current statute requires one "at large" member to be an immediate relative/conservator of a current DC resident. As required by the DD Act, CHANGE to: "At least one is an immediate relative or conservator of an individual with developmental disabilities who resides or previously resided in an institution or an individual with developmental disabilities who currently/previously resided in an institution."
7. DELETE requirement that 13 Council members be appointed by the Governor, one from each region. REQUIRE the Governor to appoint 20 "non-agency" members, as currently defined, who reflect the geographic, disability and racial, ethnic and language diversity of the state. Of these 20 non-agency members, there shall be at least one from the geographic area of each of the Council's regional offices.
 - a. DELETE the requirement in current statute that limits these appointments to be only advisory board members who had been appointed by the Governor.
 - b. DELETE the requirement in current statute that the Governor may only appoint someone nominated by the advisory board.
 - c. ALLOW the Regional Advisory Committee to make non-binding recommendations to the Governor for Council members appointed from their region.
 - d. REQUIRE that each non-agency member of the Council also serve on a regional advisory committee.

Authority of the Council Executive Director to Hire Staff

This section brings state statute into compliance with the federal DD Act provision that the Council Executive Director shall have the authority to hire Council staff.

1. ADD that the Executive Director of the Council shall have the authority to hire Council staff.
2. ✓DELETE the authority of the Governor to appoint Council staff positions.
3. DELETE the requirement in current statute that limits the ability of the Council Executive Director to hire executive directors of the local offices, by limiting that hire to only applicants nominated by the local advisory board. Instead require that the Council Executive Director hire the "director" of a local office "in consultation with" the regional advisory committee.
4. DELETE the requirement in current statute that the Council Executive Director must receive the approval of the local advisory board and the Council before removing a director of a local office.



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STATE OF CALIFORNIA

FACT SHEET

January 2014

MONITORING AND TECHNICAL ASSISTANCE REVIEW SYSTEM REPORT (MTARS)

INTRODUCTION

The California State Council on Developmental Disabilities (SCDD) is an independent state agency that is funded by the federal **Administration on Intellectual and Developmental Disabilities (AIDD)** to increase the independence, productivity, self-determination, and inclusion and integration of individuals with developmental disabilities into their communities. State Councils are expected to adhere to and comply with the provisions of the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402 (the DD Act). Each State Council is required to develop and implement a State Plan that lays out its activities to advance the purpose of the DD Act. To review California's State Plan, click here: www.scdd.ca.gov/res/docs/pdf/state%20plan/hq-scddstplanpublicversion.pdf

In order to ensure that the missions and functions of State Councils are carried out in accordance with the DD Act, AIDD staff may periodically conduct a site visit to monitor the activities of a Council. This is known as a Monitoring and Technical Assistance Review System Report site visit (MTARS). The AIDD conducted an MTARS of the California State Council on January 14—17, 2013. The AIDD released its MTARS report of the California State Council on November 22, 2013 with findings of noncompliance in four distinct areas of the DD Act.

MTARS FINDINGS

The 2013 MTARS report noted that AIDD teams had previously visited the California Council in 1994 and 2006 and had cited issues of noncompliance following those visits. They found that the noncompliance findings in 2013 were similar to and consistent with the 1994 and 2006 findings.

The AIDD found that these historical compliance issues centered primarily around conflicting provisions between California's Lanterman Act and the federal DD Act.

"The Council advocates, promotes & implements policies and practices that achieve self-determination, independence, productivity & inclusion in all aspects of community life for Californians with developmental disabilities and their families."

The AIDD found that the Lanterman Act includes provisions and requirements for the Council that are inconsistent with the requirements of the DD Act. An outline of the noncompliance issues are as follows:

- **Budget**
 - Council Funding of Area Boards
 - Clarity with the use of Federal vs. State Funds
 - Budget Development Process
 - Budget Execution Process
- **Hiring Authority**
 - Deputy Director Staff positions
 - Governor's Office role in Council Hiring Process
- **Membership**
 - Long-Term Unfilled Vacancies
 - Nomination Process
- **State Council Leadership and Activities**
 - State Council Control of Area Board Activities
 - Overlap of P&A and Area Board Duties
 - Council versus Area Board Roles & Responsibilities
 - Council Accountability over Area Board Activities

NEXT STEPS

The SCDD is required to develop and submit a Corrective Action Plan (CAP) to AIDD by February 14, 2014. The Council expects that some of the changes that are required to respond to the MTARS findings will require revisions to the Lanterman Act. The Council recognizes that the developmental disability community --- self-advocates, family members, service providers, and public officials --- need to have their voices heard while we engage in such a sensitive undertaking. Accordingly, during the coming months there will be many opportunities available for the public to weigh in. Starting in February, 2014, the Council will host listening sessions, public meetings and provide an email address for input and questions.

FURTHER INFORMATION

Please refer to the SCDD web site MTARS page for background information and upcoming events: www.scdd.ca.gov/mtarsadhoc.htm. Questions may be directed to Roberta Newton, Interim Executive Director at (916) 322-8481 or (866) 802-0514.

State Council on Developmental Disabilities



BY-LAWS

**REVISED ON: April 9, 2013
CERTIFIED BY SCDD ON: May 15, 2013**

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CALIFORNIA STATE COUNCIL ON DEVELOPMENTAL DISABILITIES

BY-LAWS

ARTICLE I. NAME & DEFINITIONS

The name of this organization shall be the State Council on Developmental Disabilities.

ARTICLE II. RESPONSIBILITIES

The responsibilities of the State Council on Developmental Disabilities are set forth in 42 United States Code Section 51001 et. seq. and Sections 4433.5 and 4520 et. seq. of the California Welfare and Institutions Code.

ARTICLE III. PRINCIPAL OFFICE

The principal office of the Council shall be located in the County of Sacramento, California. The Council may change the principal office from one location to another within the county.

ARTICLE IV. AREA OF SERVICE

The area of service shall be the State of California.

ARTICLE V. MEMBERSHIP

Appointment to the Council requires each member to fully discharge his/her duties consistent with the responsibilities of representing persons with developmental disabilities. The membership of the Council shall consist of the categories of people in accordance with state and federal law.

SECTION 1. Appointments:

Pursuant to Division 4.5, Chapter 2, Article 1, Section 4521 (b)(1), (2), and (3) of the Welfare and Institutions Code, there shall be thirty-one (31) voting members on the Council appointed by the Governor, as follows:

- (a) Twenty (20) members of the Council shall be persons with a developmental disability (self-advocates) or parents, siblings, guardians or conservators (family-advocate) of these persons. In these By-laws these persons are referred to as self-advocates and family-advocates. Of the 20 members, thirteen (13) shall each be current members of the 13 Area Boards, one member from each board and representing consumers and families in their local catchment area; and, seven (7) shall be members at large that are comprised as follow: three (3) persons with developmental disabilities; one (1) person who is a parent, immediate relative, guardian, or conservator of a resident in a developmental center; one (1) person who is a parent, immediate relative, guardian, or conservator of a person with a developmental disability living in the community; one (1) person who is a parent, immediate relative, guardian, or conservator of a person with a developmental disability living in the community nominated by the Speaker of the Assembly; and, one (1) person with a developmental disabilities nominated by the Senate

Committee on Rules.

- (b) Eleven (11) members of the Council shall include: directors or members, as appropriate, of State departments or agencies or of local agencies as prescribed in state and federal laws. These persons are referred to as agency representatives in these By-laws and shall include three (3) members appointed to represent the University Centers for Excellence (UCE) programs funded by the Administration on Developmental Disabilities as the three California UCEs.
- (c) Prior to appointing the thirty-one (31) members, the Governor shall request and consider recommendations from organizations representing or providing services, or both, to persons with developmental disabilities and shall take into account socioeconomic, ethnic, and geographic considerations of the state. The Council may, at the request of the Governor, coordinate Council and public input to the extent feasible to the Governor regarding recommendations for membership.

SECTION 2. Term of Office:

The term of office on the State Council shall be in accordance with state law. The term of each self or family advocate member shall be for three years. In no event shall any self or family advocate member serve for more than a total of six years.

SECTION 3. Conflict of Interest:

Pursuant to California Welfare and Institution Code Section 4525 the Council's approved Conflict of Interest Policy, is incorporated by reference into these By-laws.

SECTION 4. Vacancies:

A vacancy on the Council exists if any of the following events occur before the expiration of the term:

- (a) The death of the member.
- (b) An adjudication pursuant to a legal proceeding declaring that the member is physically or mentally incapacitated due to disease, illness, accident, or other condition and there is reasonable cause to believe that the member will not be able to perform the duties of office for the remainder of his/her term.
- (c) The member's resignation.
- (d) The member's removal from office.
- (e) The member's ceasing to be a legal resident of the state or the area the member was appointed to represent.
- (f) The member's absence from the state without the permission required by law beyond the period allowed by law.
- (g) The member's ceasing to discharge the duties of his/her office for the period of three consecutive meetings, except when prevented by sickness, or when absent from the state with the permission required by law. After three (3) consecutive unexcused absences, a member shall be considered as having ceased to

discharge the duties of Council membership. An unexcused absence is an absence of a member when previous notice of absence has not been given to the Council Chair or Committee Chair and to the Executive Director by telephone, email, or mail.

- (h) The member's conviction of a felony or any offense involving a violation of his/her official duties. A member shall be deemed to have been convicted under this section when trial court judgment is entered.
- (i) The member's refusal or neglect to file his/her required oath, or declaration of conflict of interests within the time prescribed after being provided notice of non-compliance and a reasonable time to comply.
- (j) The decision of a competent tribunal declaring void the member's election or appointment.
- (k) The making of a vacating order or declaration of vacancy.
- (l) The member assumes a position or responsibility that violates the Council's conflict of interest policy.

The Governor shall be notified when a vacancy occurs and shall appoint a person to serve the unexpired term of the member being replaced.

SECTION 5. Resignations:

Members shall serve a designated term unless they resign, or are otherwise disqualified to serve, or until successors have been appointed, up to the maximum years allowed by State law. Any member may resign at any time by giving written notice to the Chairperson and to the Executive Director. Such resignation shall take effect on the date of receipt of such notice or any later time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 6. Compensation and Expenses:

Self-advocate and family advocate members of the State Council shall receive honoraria pursuant to Government Code 11564.5, and Welfare and Institution Code Section 4550 not to exceed fifty (50) days in any fiscal year. All members shall be reimbursed for authorized actual and necessary expenses incurred in connection with the performance of their duties as Council members, in accordance with state regulations in the State Administrative Manual.

ARTICLE VI. MEETINGS

SECTION 1. Parliamentary Authority:

- (a) All meetings of the Council and its committees are public meetings governed by the Bagley-Keene Open Meeting Act (Government Code Section 11120, et. seq.).
- (b) Robert's Rules of Order shall be utilized as the rules for all Council and committee meetings except in instances of conflict with these By-laws, or provisions of State or federal law or regulations. The Vice-Chairperson shall serve as

Parliamentarian.

- (c) The Council may adopt, from time-to-time, such policies and rules for the conduct of its meetings and affairs as may be required.

SECTION 2. Meetings:

- (a) There shall be no less than six (6) and no more than twelve (12) meetings of the Council per year.
- (b) Special meetings of the Council may be called by the Chairperson or, in case of absence or inability to act by the Chairperson, by the Vice-Chairperson. In case of a refusal to act by the Chairperson, a special meeting may be called by written request of nine (9) members of the Council. Only matters specified in the written notice of the meeting shall be considered at such a meeting.
- (c) Regular or special meetings of the Council shall be held at a place, date, and time designated by the Council or selected by the Chairperson.

SECTION 3. Quorum:

- (a) A quorum for the Council shall be a simple majority of the statutory required membership.
- (b) A quorum for each Council committee and sub-committee shall be a simple majority of the appointed members of that committee.

SECTION 4. Voting Rights of Members:

- (a) Each member shall be entitled to one vote, to be exercised in person. Proxy voting shall not be permitted.
- (b) Except as otherwise specifically provided in State law or these By-laws, all matters submitted for determination shall be decided by a majority vote.

SECTION 5. Chairperson Pro Tem:

If neither the Chairperson nor Vice-Chairperson is present to preside at a Council meeting, a chairperson pro tem shall be elected by the majority vote of the Council members present.

ARTICLE VII. OFFICERS

SECTION 1. Officers:

The officers of the Council shall be a Chairperson and a Vice - Chairperson elected from among the self and family advocate members. These officers shall perform the duties described in these By-laws.

SECTION 2. Election of Member Officers:

Election of officers shall occur once every two years. The election shall be held during the last meeting of the appropriate calendar year. Only self and family advocate members shall be eligible to hold office.

SECTION 3. Voting Procedure:

Council officers shall be elected by a majority vote. Recommendations for officers shall be in the form of nominations from the Nominating Committee. Nominations may also be received from the floor prior to the election, but subsequent to the report of the Nominating Committee.

SECTION 4. Term of Office:

The Chairperson and Vice-Chairperson shall be elected for a term of two years. Individuals may be elected to these positions for no more than two consecutive terms. Their term of office shall begin the first day of the new calendar year.

SECTION 5. Vacancies:

If the Chairperson resigns or is permanently unable to serve during the term of office pursuant to Article V Section 4, the Vice-Chairperson shall become the Chairperson for the remainder of such term. Upon the vacancy of the Vice-Chairperson's term of office or if the Vice-Chairperson resigns or is permanently unable to serve during the term of office, the Chairperson shall appoint an interim Vice-Chairperson to serve until an election is conducted. The Chairperson shall also appoint a nominating committee of at least three (3) but not more than five (5) Council members that will provide a slate of nominations for the election of Vice-Chairperson during the next appropriate Council meeting.

The voting procedure established in Article VII, Section 3 shall be used for the election process of the permanent Vice-Chairperson.

SECTION 6. Duties of the Officers:

- (a) Chairperson - The responsibilities of the Chairperson are: to preside at all meetings of the Council; to appoint chairpersons and members to all Council committees, except the Nominating Committees, to appoint Council representatives in relation to other agencies and consumer groups; and to represent the Council as needed. The Chairperson shall have full voting rights on all Council actions.
- (b) Vice-Chairperson - The responsibilities of the Vice-Chairperson are to perform all the duties of the Chairperson if the Chairperson is absent or if the Chairperson requests the Vice-Chairperson to do so. When acting in the capacity of the Chairperson, the Vice-Chairperson has the same authority as the Chairperson. The Vice-Chairperson also serves as Chair of the Executive Committee and as Parliamentarian.

SECTION 7. Removal from Office:

Action to remove an officer shall be in accordance with the following procedure:

- (a) Written notification must be submitted by registered mail to the Executive Director from Council member(s) describing the specific cause for which removal is sought.
- (b) The Executive Director shall notify the officer charged by registered mail within two (2) working days of receiving the charges. Any member so notified shall have ten (10) days to respond to the group or individual responsible for notification. Following this ten (10) day period, the responsible parties shall notify the Executive Director within ten (10) days as to whether or not they wish to request removal of the officer. If the responsible parties are satisfied by the officer's response that no sufficient cause exists, the matter will be closed with written notice to the Executive Director and to the officer.
- (c) If the group or individual requesting removal is not satisfied by the response of the officer or if the officer fails to respond in ten (10) days, the Executive Director shall put the issue on the agenda at the beginning of the next Council meeting and inform the Council members as to the purpose of the agenda item.
- (d) Written charges shall be distributed and reviewed at the specified meeting of the Council.
- (e) A majority vote shall be required to remove a chairperson or vice-chairperson from office. If removal of the Chairperson is under consideration, the vice-chairperson shall preside.

ARTICLE VIII. EXECUTIVE DIRECTOR

SECTION 1. Appointment:

- (a) The Executive Director of the Council shall be appointed by and serve at the will of the Council in a position exempt from all civil service requirements pursuant to the California Constitution, Article 7, section 4(b) and Welfare and Institutions Code Section 4551(a)(2). The appointment of the Executive Director shall occur during a regular or special meeting of the Council.
- (b) A performance review of the Council Executive Director shall be coordinated by the Executive Committee and conducted annually by the full Council.

SECTION 2. Responsibilities and Duties:

- (a) The Executive Director shall be the chief administrative officer of the Council and shall have all the authority and responsibility assigned to the director of a state agency including budget, personnel, and contractual transactions. These include authority for entering into and execution of agreements on behalf of the Council in order to implement the policies of the Council.
- (b) The Executive Director shall be under the direction and control of the Council and

shall do and perform such other duties as may be assigned by the Council.

- (c) The Executive Director shall serve as clerk to the Council.

SECTION 3. Removal:

- (a) Action to remove the Executive Director of the Council shall be conducted in accordance with Government Code Section 11120, et. seq.
- (b) The Executive Committee of the Council may recommend removal of the Executive Director during a regular or special meeting. This recommendation shall be taken to the Council during a regular or special meeting for discussion and action.
- (c) A majority vote, during a regular or special Council meeting, shall be required to remove the Executive Director from his or her exempt appointment.

ARTICLE IX. COMMITTEES

SECTION 1. Authority:

- (a) Subject to the provision of these By-laws, all committees, with the exception of the Executive Committee, shall be advisory and shall not have the power to bind the Council except when specifically authorized by the Council to do so. Recommendations made by advisory committees shall be presented to the Council for adoption in the form of a motion.
- (b) Subject to provision of these By-laws, a vacancy in the membership of a committee, except the Nominating Committee, may be filled by the Council Chairperson.
- (c) A committee may meet upon call of the chairperson of the committee or the Council Chairperson.
- (d) Unless otherwise specified in these By-laws, the Chairperson and the Executive Director of the Council shall serve ex officio, without vote, on all committees, except the Nominating Committee.
- (e) A committee member may be removed from the committee by the Council Chair after three (3) consecutive unexcused absences. An unexcused absence is an absence of a member when previous notice of absence has not been given to the Committee Chair or Executive Director or appropriate Deputy Director by telephone, e-mail or mail.

SECTION 2. Standing Committees:

- (a) There shall be six (6) standing committees of the State Council:
 - (1) Executive
 - (2) Administrative
 - (3) Legislative and Public Policy
 - (4) Program Development
 - (5) Self-Advocates Advisory
 - (6) Employment First
- (b) The Chairperson and members of each of the standing committees shall be appointed by the Council Chairperson. In the event of a vacancy for any reason in membership or the Chairperson, a successor may be appointed by the Council Chairperson. The Chairpersons and Vice-Chairpersons of the State Council and of its standing committees shall be individuals with a developmental disability, or the parent, sibling, guardian, or conservator of an individual with a developmental disability (WIC 4535(b)). The All committee chairperson appointments shall be announced to the Council at the next available Council meeting.
- (c) The membership of all standing committees, except the Executive Committee, shall be open to non-members of the Council. The expenses of non-Council members may be reimbursed on the same basis as a Council member with the exception of the honorarium.
- (d) All members of the Council shall be expected to serve on at least one standing committee of the Council.
- (e) The charge of each of these committees shall be as follows:
 - (1) Executive Committee
The Executive Committee shall serve as the coordinating body to the Council. The Committee shall:
 - [a] Consist of the Council Chairperson, Vice-Chairperson, chairperson of the Legislative and Public Policy Committee, chairperson of the Program Development Committee, chairperson of the Strategic Planning Subcommittee, chairperson of the Self-Advocates Advisory Committee, chairperson of the Employment First Committee and two (2) other Council members.
 - [b] Be chaired by the Council Vice-Chairperson.
 - [c] Act on behalf of the Council between meetings, but shall not modify any action taken by the Council unless authorized by the Council to do so. The full Council at the next regular or special meeting shall receive a report of all Executive Committee actions taken between Council meetings.

- [d] Administrative matters shall be a standing agenda item at every meeting and shall include but not be limited to, budget reports, expenditure reports and other major administrative issues.
- [e] Make recommendations to the Council regarding approval of Community Program Development Grants (CPDG) projects to be funded, and allocations.
- [f] Appoint members of CPDG Grant Review team as needed.
- [g] Provide direction to the Executive Director regarding all matters pertaining to Council responsibilities.
- [h] Make recommendations to the Council regarding amendments to the By-laws, changes in committee structure or responsibilities.
- [i] Make recommendations to the Council regarding Council member training.
- [j] Make recommendations to the Council regarding the presentation of awards on behalf of the Council.
- [k] Make recommendations to the Council regarding matters assigned by the Council or the Council Chairperson.
- [l] Make recommendations to the Council regarding the appointment, evaluation, or removal of the Executive Director.
- [m] Monitor and evaluate California State Strategic Plan on Developmental Disabilities implementation and submit findings to the Council.
- [n] Review and make recommendations to the Council regarding area boards' requests to initiate litigation per Welfare and Institution Code Section 4548(g)(4) and (6).
- [o] Coordinate the Council's litigation activities, as needed, and make recommendations to the full Council.
- [p] Make appointments to and receive recommendations from the Strategic Planning Sub-Committee.
- [q] Present a slate of nominees to be elected to the Nominating Committee. Election to the Nominating Committee shall occur at the September Council meeting during election years.

- [r] Form and provide oversight for a State Plan Sub-Committee. This Sub-Committee will be formed periodically to review the existing State Plan and make progress toward an update.

This Sub-Committee shall:

- (1) Advise the Executive Committee on the collection and reporting of information on needs, including unmet needs, priorities and emerging issues
- (2) Make recommendations to the Executive Committee regarding policy priorities, goals and objectives for the California State Plan on Developmental Disabilities
- (3) Advise the Executive Committee and full Council in the planning of the implementation and reporting of the goals and objectives of the Council's California State Plan on Developmental Disabilities.

(2) Administrative Committee

The Administrative Committee shall assist with monitoring the administrative and budgetary activities of the Council. The Committee shall:

- [a] Be composed of at least three (3) Council Members
- [b] Make recommendations to the Council regarding allocation of discretionary fiscal resources and other budgetary issues.
- [c] Make recommendations to the Council regarding budgeting for anticipated fiscal resources among Council operations and specific service priorities for inclusion in the California State Strategic Plan and the Governor's budget.
- [d] Make recommendations to the Council regarding monitoring and evaluating administrative contracts and agreements.
- [e] Make recommendations to Council regarding all contracts and agreements.
- [f] Monitor and evaluate administrative contracts and agreements; and take actions authorized in all Council contracts and agreements.

- [g] Make recommendations to the Council regarding administrative matters and policies including organizational charts and structure.

(3) Legislative and Public Policy Committee

The Legislative and Public Policy Committee shall implement the California State Strategic Plan on Developmental Disabilities objectives as assigned by the Council. The Committee shall:

- [a] Be composed of at least seven (7) members.
- [b] Review, comment and recommend positions on significant proposed legislation and/or proposed regulations.
- [c] Recommend legislation consistent with Council's responsibilities and objectives.
- [d] Recommend initiatives and policies consistent with Council responsibilities and objectives.
- [e] Provide testimony and recommendations to the Legislature with regard to matters pertaining to people with developmental disabilities.
- [f] Respond to other responsibilities as assigned by the Council or Council Chairperson.

(4) Program Development Committee

The Program Development Committee shall advise the Council in the development of services and projects designed to improve the quality of life for individuals with developmental disabilities and their families

The Committee shall:

- [a] Be composed of at least seven (7) members.
- [b] Make recommendations to the Council regarding the Community Program Development Grant (CPDG) application process and suggested priorities/criteria for proposals.
- [c] Develop methods to market and implement successful CPDG projects throughout the State.
- [d] Carry out other responsibilities as assigned by the Council or the Council Chairperson.

(5) Self-Advocates Advisory Committee

The Self-Advocates Advisory Committee shall advise the Council as a voice for all Californians with disabilities, by promoting State Council participation and peer advocacy that advances independence and inclusion. The Committee shall:

- [a] Be composed of self-advocate members of the Council.
- [b] Advise the Council regarding self-advocate needs related to serving the Council including manners in which to ensure participation and inclusion in all meetings.
- [c] Advise the Council regarding policies, programs and any other area affecting self advocates in California.
- [d] Review materials and other Council produced information to evaluate and make recommendations regarding plain language approaches.
- [e] To have a standing representative to the Statewide Self-Advocacy Network (SSAN.)

(6) Employment First Committee

The Employment First Committee is responsible for ensuring the development of an Employment First Policy which has the intended outcome of significantly increasing the number of individuals with developmental disabilities who engage in integrated, competitive employment. The Committee shall:

- [a] Be composed of a representative from each of the following:
 - (1) The Department of Developmental Services
 - (2) The Department of Rehabilitation
 - (3) The California Department of Education
 - (4) One from each of the three University Centers of Excellence in California
 - (5) Disability Rights California
 - (6) Employment Development Department
 - (7) Family Resource Center Network
 - (8) Association of Regional Center Agencies
 - (9) Service Employees International Union
 - (10) The ARC
 - (11) Four self-advocates
 - (12) Four family advocates
 - (13) Such others as deemed needed to implement the

responsibilities of the Council.

- [b] Identify the respective roles and responsibilities of state and local agencies in enhancing integrated, competitive employment for people with developmental disabilities.
- [c] Identify strategies, best practices, and incentives for increasing integrated, competitive employment opportunities for people with developmental disabilities, including, but not limited to, ways to improve the transitional planning process for students 14 years of age or older, and to develop partnerships with, and increase participation by, public and private employers and job developers.
- [d] Identify existing sources of employment data and recommend goals for, and approaches to measuring progress in, increasing integrated, competitive employment for persons with developmental disabilities.
- [e] Recommend legislative, regulatory, and policy changes for increasing the number of individuals with developmental disabilities in integrated, competitive employment, self-employment, and microenterprises and who earn wages at or above minimum wage.
- [f] Provide an annual report to the Governor and Legislature by July 1 of each year that describes the work and recommendations of the Committee.

SECTION 3. Nominating Committee:

The Nominating Committee shall provide advice to the Council relative to the bi-annual election of Council officers. The Committee shall:

- (a) Be composed of at least three (3) and not more than five (5) Council members.
- (b) Be elected by the Council at the September Council meeting from a slate of nominations presented by the Executive Committee.
- (c) Serve for one year. Be elected at least forty-five (45) days prior to the annual election.

SECTION 4. Committees, Sub-Committees and Ad-Hoc Committees and Task Forces:

- (a) Committees, Sub-committees, Ad-Hoc committees and Task Forces may be established by the Council to carry out specified California State Strategic Plan on Developmental Disabilities objectives and purposes of the Council.

- (b) The term of office and, qualifications of these groups' chairpersons and members shall be established by the Council. The membership of Sub-Committees and Ad-Hoc committees shall be open to non-members of the Council and shall be appointed by the Chairperson of the Council. The expenses of non-Council members may be reimbursed on the same basis as a Council member with the exception of the honorarium.

ARTICLE X. COUNCIL GENERAL PROVISIONS

SECTION 1. Certification and Inspection:

The original or a copy of the By-laws, as amended or otherwise altered to date, certified by the Council shall be recorded and kept in a book that shall be kept in a location in the principal office of the Council, and such book shall be open to public inspection at all times during office hours.

SECTION 2. Records, Reports and Inspection:

- (a) The Council shall maintain adequate and correct accounts, books and records of all its business and properties.
- (b) Such records shall be kept at its principal place of business. All books and records shall be open to inspection by the Council and the general public, except those records or data regarding an employee, if such disclosure would constitute an unwarranted invasion of personal privacy, or records of the Council relating to its participation in a judicial proceeding.
- (c) An annual financial report and budgets shall be available for inspection at the Council's principal place of business.

ARTICLE XI. AMENDMENTS OF BY-LAWS

Subject to the limitations of federal and state law, these By-laws shall be reviewed at least annually. The Executive Committee shall be responsible for the annual review of the By-laws, submitting recommendations for adoption of new By-laws and amendments or repeal of existing By-laws to the Council. These By-laws may be amended, repealed or adopted by a two – thirds majority during any regular or special meeting of the Council so long as a draft of the proposed action was submitted in writing to the Council at least ten (10) days prior to the meeting.

ARTICLE XII. INDEMNIFICATION

SECTION 1. Definitions:

For the purposes of this Article XII, "agent" means any person who is or was a director or member as appropriate, officer, employee, or other agent of the Council. Proceeding means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative; and expenses include without limitation attorney's fees and any

expenses of establishing a right to indemnification under Section 4 or 5(b) of this Article XII.

SECTION 2. Indemnification in Actions by Third Parties:

The Council shall have power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the Council to procure a judgment in its favor, by reason of the fact that such person is or was an agent of the Council, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with such proceeding if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Council and, in the case of a criminal proceeding, has no reasonable cause to believe the conduct of such person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of the Council or that the person had reasonable cause to believe that the person's conduct was unlawful.

SECTION 3. Indemnification in Actions by or in the Right of the Council:

The Council shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action by or in the right of the Council, to procure a judgment in its favor by reason of the fact that such person is or was an agent of the Council, against expenses actually and reasonably incurred by such person in connection with the defense or settlement of such action if such person acted in good faith, in a manner such person believed to be in the best interests of the Council, and with such care, including reasonable inquiry as an ordinarily prudent person in a like position would use under similar circumstances. No indemnification shall be made under this Section 3:

- (a) In respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable to the Council in the performance of such person's duty to the Council, unless and only to the extent that the court in which such proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for the expenses which such court shall determine;
- (b) Of amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval; or
- (c) Of expenses incurred in defending a threatened or pending action, which is settled or otherwise disposed of without court approval, unless it is settled with the approval of the Attorney General.

SECTION 4. Indemnification Against Expenses:

To the extent that an agent of the Council has been successful on the merits in defense of any proceeding referred to in Section 2 or 3 of this Article XII or in defense of any claim, issue, or matter therein, the agent shall be indemnified against expenses actually and reasonably

incurred by the agent in connection therewith.

SECTION 5. Required Determinations:

Except as provided in Section 4 of this Article XII any indemnification under this Article XII shall be made by the Council only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in Section 2 or 3 of this Article XII, by:

- (a) A majority vote of a quorum consisting of directors or members as appropriate, who are not parties to such proceeding; or
- (b) The court in which such proceeding is or was pending upon application made by the Council or the agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney, or other person is opposed by the Council.

SECTION 6. Advance of Expenses:

Expenses incurred in defending any proceeding may be advanced by the Council prior to the final disposition of such proceeding upon receipt of an undertaking by or on behalf of the agent to repay such amount unless it shall be determined ultimately that the agent is entitled to be indemnified as authorized in this Article XII.

SECTION 7. Other Indemnification:

No provision made by the Council to indemnify its or its subsidiary's directors or members as appropriate, or officers for the defense of any proceeding, whether contained in the Articles, Bylaws, a resolution directors or members as appropriate, or an agreement, or otherwise, shall be valid unless consistent with this Article XII. Nothing contained in this Article XII shall affect any right to indemnification to which persons other than such directors or members as appropriate, and officers may be entitled by contract or otherwise.

SECTION 8. Forms of Indemnification Not Permitted:

No indemnification or advance shall be made under this Article XII, except as provided in Section 4 or 5(b), in any circumstances where it appears:

- (a) That it would be inconsistent with a provision of the Articles, these By-laws, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or
- (b) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.



CONFLICT OF INTEREST POLICY

Community Program Development Grants (CPDG) and Sponsorships

In accordance with Section 15001 in Title 42 of the United States Code and California Welfare and Institutions Code Section 4520, the California State Council on Developmental Disabilities (Council) is established as an independent state agency by both federal and State law. The Council ensures that individuals with developmental disabilities and their families participate in the planning and development of the services they need which promote independence, productivity, inclusion and self-determination.

Moreover, because of the vast size, complexity and diversity of the State of California, local area advisory boards were established to ensure the direct involvement of local individuals familiar with the structure and operation of services and programs for persons with disabilities in their communities.

To that end, the Council provides funding to public and private entities and agencies, in accordance with all applicable federal and state laws, to assist in the development of innovative services for persons with disabilities. This funding is mainly distributed by means of CPDG and sponsorships.

The interests of Council members and area board members (collectively described as Members) and Council employees (employees) will inevitably involve them in organizations, causes and other endeavors which may create an actual or perceived conflict with the CPDG and Sponsorship processes. It would be a disadvantage to the Council to deprive it of the involvement of interested colleagues, but their participation in Council decision making cannot violate current law nor impair the fairness and integrity of the grant process.

CONFLICTS OF INTEREST

Welfare and Institutions Code Sections 4525 and 4546(g)(1) specifically prohibit employees and/or board members of state, local and other private entities from serving on the area advisory board or Council if the entity serves persons with developmental disabilities and the service is funded in whole or in part with state funds. However, exceptions are made for: 1) parents or relatives who receive public funds expressly for the purposes of providing direct services to their child, 2) persons with developmental disabilities who receive employment services through a provider receiving state or federal funds and, 3) members who sit on both the area advisory board or Council.

Based on the vast size of California, the need for geographical diversity, and local involvement in State plan activities, the California Legislature determined that one member of each local area advisory board also sit as a member of the Council. Therefore, this dual capacity has been deemed a non-incompatible and non-conflictive role by law.

Additionally, conflict of interest situations include but are not limited to the following: 1) Members and/or their immediate relatives being employed by, doing business with or receiving anything of value from applicant organizations, 2) Members and/or their immediate relatives serving as board members of applicant organizations, 3) Council employees and/or their immediate family members being employed by, doing business with (other than Council business), or receiving anything of value from applicant organizations and, 4) Council employees serving as board members of applicant organizations.

POLICY

In order to address actual, potential and perceived conflicts of interest in accordance with Public Contract Code 10410 *et seq.*, Government Code Section 19990 *et seq.* and, the SCDD's Policy and Statement of Incompatible Activities, the Council adopts the following conflict of interest policy to ensure the integrity and fairness in the conduct of all of its funding activities:

Members

1. In accordance with Public Contract Code 10410, no Member may apply for Council funds if the Member will receive compensation from such funding. This includes, but is not limited to, situations where Members are employees of applicant organizations and stand to receive compensation from such and will be funded through the CPDG or Sponsorship process.
2. In situations where a Member is employed by an applicant organization but **will not** receive direct compensation from such funding, there is a potential conflict of interest that must be disclosed in accordance with Government Code Section 87105 as follows:
 - a) The Member shall disclose the conflict prior to making any related grant decisions.
 - b) The Member must publicly identify the financial interest that gives rise to the conflict of interest or potential conflict of interest in detail sufficient to be understood by the public.
 - c) Recuse himself or herself from discussing and voting on the matter.
 - d) Leave the room until after the discussion, vote, and any other disposition on the matter is conducted.
 - e) The Member may speak on the issue during the time that the general public speaks on the issue.

This disclosure shall be made a part of the public meeting minutes in accordance with the Bagley-Keene Public Meeting Act (Government Code Section 11120 *et seq.*).

3. In situations where a Members' immediate relative is an employee of an applicant organization, the Member must determine if it is reasonably foreseeable that a decision will have a financial effect on the Member or their immediate relative. A financial effect includes increasing or decreasing the personal expenses, income, assets, or liabilities of the Member or the Members' immediate relative (2 CCR 18703.) If so, the Member has a conflict of interest that must be disclosed in accordance with the procedure in section 2 (a) – (e) above.

Board Members of Applicant Organizations

4. In situations where the Member is also a board member of the applicant organization and/or a Member's immediate relative is a board member of the applicant organization, the Member must follow the procedure in Section 2(a) above.

This disclosure shall be made a part of the public meeting minutes in accordance with the Bagley-Keene Act Public Meeting Act (Government Code Section 11120 *et seq.*).

Council Employees

5. No employee may receive any form of compensation from applicant organizations in accordance with Public Contract Code 10410.
6. If employee's immediate relative is an employee of an applicant organization, the employee must determine if it is reasonably foreseeable that a decision will have a financial effect on the employee or their immediate relative. A financial effect includes increasing or decreasing the personal expenses, income, assets, or liabilities of the employee or the employee's immediate relative (2 CCR 18703.) If so, the employee has a conflict of interest that must be disclosed in accordance with the process set forth in 2(a) - (e) above.

Other Situations

In all other situations where there may be a conflict, it is required that the Member or employee disclose the possible conflict to Council Legal staff in order to have an analysis on the matter. Should it be determined that a conflict does exist, any Member involved shall abstain from voting and shall not participate in any discussion involving the funding. This disclosure shall be made a part of the public meeting minutes in accordance with the Bagley-Keene Act.

If an employee conflict is identified, additional advice may be procured from the Fair Political Practices Commission (FPPC.)

DATE: SEPTEMBER 2011
Modified on December 10, 2013 by Executive Committee
DRAFT edits by Administrative Committee on January 22, 2014

TO: SCDD STAFF, COUNCIL AND LOCAL AREA MEMBERS

FROM: STATE COUNCIL ON DEVELOPMENTAL DISABILITIES

RE: REGIONAL CENTER REQUESTS FOR WAIVER OF CONFLICT OF INTEREST CRITERIA PROCEDURE

The purpose of these procedures is to establish consistent evaluation criteria and process of requests for waivers in accordance with Welfare and Institutions Code Sections 4622 *et seq.* and Title 17 Section 54520. These procedures shall be used by the California State Council on Developmental Disabilities (Council) and local area boards.

*These procedures may be revised in accordance with regulatory changes.

WAIVER OF CONFLICT OF INTEREST EVALUATION PROCESS

If there is good reason that a RC is unable to meet all of the criteria for their board, the director of DDS may waive the criteria for a period of time, not to exceed one year, with the approval of the appropriate area board and the Council in accordance with WIC 4628.

The Council/area board procedure for evaluating requests for waiver shall be:

1. When area board receives a request for a waiver, it shall be scheduled for discussion and action during the next available area board meeting.
2. When evaluating a request for waiver for a regional center board member, the area board shall discuss and analyze the [waiver request and provide their written analysis to the Council utilizing the following criteria](#):
 - a. Does the RC have and utilize a public board member recruitment process? If not, what recruitment efforts were implemented with respect to the board member in question?
 - b. What specific criteria are involved in the request? Is the individual prohibited from serving based on the statute (C. 1-4 [abovebelow](#)) or regulation (C. 5-7 [abovebelow](#)) or both?

- c. Does the proposed mitigation plan effectively address avoidance of the identified conflict of interest?
 - d. What impact will the approval/denial of the waiver have on the RC board?
 - e. Has the RC requested a waiver on behalf of the same individual before? If so, how long ago?
3. When evaluating a request for waiver for a regional center employee, the area board shall discuss and analyze the following:
- a. Does the proposed mitigation plan effectively address avoidance of the identified conflict of interest? If not, can the area board suggest alternatives?

AND

- b. Before any action is taken on a waiver request made by a regional center employee ~~is made~~, the area board **must** contact staff counsel at SCDD HQ for guidance.
4. Upon evaluating the request, the area board shall take action to approve/deny the waiver request unless additional information is requested from RC.
5. Within 5 business days of taking action, the area board shall forward their analyses and action to the Council.
6. The Council shall schedule a discussion and action for the next available regular Council meeting. During the discussion, the Council shall review the area board analyses. The Council shall take action to approve/deny the waiver unless further information is requested from the area board.
7. The Council shall submit their action to DDS within 5 business days.

REFERENCE STATUTORY AND REGULATORY BACKGROUND

A. Regional Center Conflict of Interest Policy

The establishment and implementation of a conflict of interest policy and reporting process for regional centers (RC) is intended to minimize, if not eliminate, the occurrence of conflicts of interest in certain settings. This seeks to ensure that the RC board members act in the course of their duties solely in the best interest of the consumers and their families without regard to the interest of any other organization with which they are associated.

Each RC shall submit a conflict-of-interest policy to the Department of Developmental Services (DDS) by July 1, 2011, and shall post the policy on its Internet Web site by August 1, 2011. The policy shall do, or comply with, all of the following:

1. Be consistent with applicable law.
2. Define conflicts of interest.
3. Identify positions within the regional center required to complete and file a conflict-of-interest statement.
4. Facilitate disclosure of information to identify conflicts of interest.
5. Require candidates for nomination, election, or appointment to a RC board, and applicants for RC director to disclose any potential or present conflicts of interest prior to being appointed, elected, or confirmed for hire by the RC or RC governing board.
6. Require the RC and its governing board to regularly and consistently monitor and enforce compliance with its conflict-of-interest policy.

B. Conflict of Interest Reporting

Welfare and Institutions Code Section 4626(e-l) sets the process for reporting conflicts of interest. The reporting process is:

1. DDS is responsible for developing a Conflict of Interest Reporting Statement (Statement.)

2. The Statement shall be completed by each RC governing board member and executive director within 30 days of selection, appointment or election and annually thereafter. A Statement must also be completed upon any change in the status of the board member or executive director that creates a potential or present conflict of interest.
3. DDS and the appropriate RC governing board shall review the Statements of each board member and the executive director to ensure that no conflicts of interest exist; however, if a present or potential conflict of interest is identified for a board member or executive director that cannot be eliminated, the RC governing board shall submit to DDS and the Council, a copy of the Statement and a plan that proposes mitigation measures within 30 days (including timeframes and actions that the governing board or individual will take to mitigate the conflict of interest.)

The submission of this Statement and mitigation plan is not considered a request for waiver.

C. Conflict of Interest Criteria

California law outlines the criteria by which DDS evaluates conflicts arising among RC board members.

Additionally, it is expected that board members will be free from conflicts of interest that could adversely influence their judgment, objectivity or loyalty to the RC, its consumers or its mission.

Pursuant to Welfare and Institutions Code section 4626(b), no member of the governing board or member of the program policy committee of a RC shall be any of the following:

2. An employee of DDS or any State or local agency that provides service to a RC consumer, if employed in a capacity which includes administrative or policymaking responsibility, or responsibility for the regulation of the RC.
3. An employee or member of the Council or area board,
4. With the exception of a consumer advisory committee member, an employee or member of the governing board of any entity from which the RC purchases consumer services.
5. Any person who has a financial interest in RC operations, except as a consumer of RC services.

Title 17 provides additional conflict of interest criteria which may or may not encompass the criteria set forth in statute. In accordance with 17 CCR 54520, the following constitute conflicts of interest for RC board members:

6. When a member of the board or their family member is: a) a director, officer, owner, partner, shareholder, trustee or employee of any business entity or provider, b) holds any position of management in any business entity or provider or, 3) has decision or policymaking authority in such an entity or provider.
7. When the advisory committee board member is an employee or member of the governing board of a provider from which the RC purchases client services and engages in the fiscal matters. If so, this member is prohibited from serving as an officer of the RC governing board and from voting on fiscal matters or issues.
8. When a governing board member is any individual described in WIC 4626.



CALIFORNIA STATE COUNCIL ON DEVELOPMENTAL DISABILITIES

CONTRACTING POLICIES AND PROCEDURES

Adapted from the:

Demystifying Contracts Handbook

Produced by the California Department of Social Services Contracts and Financial
Analysis Bureau

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TYPES OF CONTRACTUAL AGREEMENTS

A contract is a legally binding agreement between the California Department of Social Services (CDSS) and another entity, public or private, for the provision of goods or services. A contract sets forth the terms, conditions, and the statement of all work to be performed.

Proper classification of contracts is necessary as a first step in determining which solicitation process is appropriate for the contract, and what elements are required to be in the contract. There are several types of contracts and services.

1. Interagency Agreement (IA)

An interagency agreement is an agreement between two or more state agencies.

Examples include: An IA between SCDD and the Department of Developmental Services (DDS) to provide quality assurance activities.

2. Consultant Services

Defined as a contract for services of an advisory nature, which provides a recommended course of action or personal expertise. The contract calls for a "product of the mind" rather than the rendition of mechanical or physical skills. A "product of the mind" may include anything from answers to specific questions to the design of a system or plan.

Examples of consultant services contracts include: Legal services, expert witness services, training and technical assistance, strategic planning, etc.

3. Services Contract (Non-Consulting)

A services contract is a contract in which the contractor provides a duty or labor, of a non-consulting nature, and is usually a rendition of mechanical or physical skills.

For example: janitorial services, moving services, shredding services, and printing services.

4. Subvention Services

To be classified as a subvention services contract, the contract must:

a) provide assistance to local governments and/or aid to the public; and b) directly or through an intermediary, such as a nonprofit organization. Subvention services contracts are exempt from the competitive bidding requirements.

Examples: A contract with California Youth Connection to provide technical and outreach services to foster youth; a contract with the San Diego State University Foundation to provide training to social workers on child welfare services.

NOTE: The Department of General Services (DGS) has determined that grants provided by the SCDD do not qualify under the subvention agreement contract exception.

5. Public Works

An agreement for the erection, construction, alteration, repair, or improvement of any state-owned structure, building, road, or other state improvement of any kind.

Examples include: Electrical/cabling services and assembling modular furniture in State offices.

6. Information Technology (IT) Services

Services performed directly on or pertaining to electronic technology and telecommunications hardware, firmware, and software including but not limited to computerized and auxiliary automated information handling, system design and analysis, data conversion, computer programming, information storage and retrieval, voice, video, data communications, requisite system controls, simulation, electronic commerce, maintenance and repair, software licensing and support, training, and all related interactions between people and machines. Also included are services of an advisory nature requiring a recommended course of action or personal expertise as it pertains to an information technology project and information technology support functions.

SCDD has competitive purchasing authority to conduct bids for IT Services up to \$4,999.99. We also have purchasing authority to utilize the California Multiple Award Schedules (CMAs) and Master Agreements/Master Service Agreements.

7. California Multiple Award Schedule (CMAS) Contracts

The CMAS Program was established in May 1994 to enable State Agencies and local governments to obtain IT (and a limited number of non-IT services) without the need for DGS to issue a specific bid. The objective of the CMAS Program is to streamline purchases of goods and services by removing repetitive, resource intensive, costly and time consuming bid processes. CMAS vendors are approved by DGS, along with a description of the specific services and the maximum rates allowable for the services. Vendors interested in working with the State must apply directly to DGS. In order to obtain services from an authorized CMAS vendor, SCDD issues a request for offer (RFO), which results in a CMAS contract.

8. Memorandum of Understanding (MOU)

The DGS State Contracting Manual defines a memorandum of understanding as "a contract". For SCDD, the MOU usually does not contain dollars or fiscal provisions. The primary purpose of the MOU is to delineate the roles and responsibilities of the parties. Reimbursement for services are from other established sources such as the county administrative claim.

For example, each SCDD local office with a developmental center in its area has an MOU with that developmental center that outlines their individual roles and responsibilities. The fiscal provisions are outlined in the IA between the SCDD and DDS.

REQUEST FOR CONTRACT SERVICES

Complete a form 704 - (GEN 704)

A completed form 704 must be submitted to the Deputy Director for Administration.

The GEN 704 consists of three pages.

1. Include the name of the contact person, telephone number, fax number and office number.
2. Indicate the type of request: Is the request for a Procurement/Bid such as a Solicitation for Offer (SFO), Master Service Agreement (MSA), Invitation for Bid (IFB), Request for Proposal (RFP)? Is the request for a contract such as an interagency agreement (IA), standard agreement (SA), CA Multiple Award Schedule (CMAS), memorandum of understanding (MOU), direct pay, or other?

If the request for the contract is to confirm the result of a bid or solicitation, please check the box after "Contracts" and specify the bid/solicitation number.

Fill out the name of the proposed contractor in the contractor information box. Always use the legal name of the contractor. If you know whether or not the contractor is a certified small business or disabled veteran business enterprise, please indicate by checking the yes or no box.

3. Is this an amendment or renewal to an existing service or contract?

If yes, enter the previous contract number and contractor name. If this is an amendment, the contract number to ensure that the right contract file is pulled to verify the contract term and amount prior to writing the amendment.

If this is a renewal to an existing service or contract, please enter the prior contract number to pull the former contract file to help draft the scope of work (SOW).

4. "Contract Term": Enter the proposed start date and ending date of the service period. You will be contacted and told if the proposed term is not realistic or attainable. For example, if the bidding process requires two months and there is only two weeks between the receipt of GEN 704 and the proposed start date.

If the request is to amend the term, enter the original start date and the revised or proposed end date, not the original end date. If the request is for amendments to revise the funding or scope of work and the term is not affected, enter the original end date.

Amendment effective date: Enter the date for which the change (in scope, increase or decrease in the amount of funding, hourly rate, etc.) is to take place. Provide us with your best estimate. The only rule here is that if you are extending the term, the effective date must be prior to the expiration of the original term, i.e., you want to extend the contract for 12 months, from June 30, 2013 through June 30, 2014. The effective date of amendment can be no later than June 30, 2013. If you have multiple actions like amending the term and increasing the funds, the effective date would be the earliest date in which an action takes place. If the contract ran out of money in March, the amendment date would be March and not June to extend the term.

5. Purpose/necessity of contract/amendment (concise description): Provide a brief and concise description of the contract service, e.g., provide development training and quality improvement services to persons with developmental disabilities. Attach the scope of work and budget detail (more information on SOW and budget after we get through the instructions on how to complete the GEN 704). Check the box on whether the service is mandated or not and provide the authority/legislative act. (More information on justification of services in Page 2). Enter the Index Code, PCA, object code (if known).

Funding, etc: Identify whether the funds are State, Federal, or both, and the percentage of each. Check Support or Local Assistance; whether the agreement is a payable or receivable contract or N/A (if an MOU); give us the amount of funds available by each state fiscal year and identify the funding source (budget/redirect, etc.)

6. Required Approvals and Signatures: The following signatures are currently required: Deputy Director for Local Area Offices (if applicable), Deputy Director for Administration and Executive Director.
7. Page 2: Required Justification For Contract Services

Check box on whether the service is mandated or not and provide the authority or legislation.

#1, Briefly describe the services to be provided.

#2, Describe why the services are critical or essential to the Department's mission and goals; Describe expected results or benefits to be achieved.

#3, Describe the consequences if this request for contract is denied.

#4, Describe possible alternatives to contracting.

#5, Describe why services cannot be performed by civil service employees, per Government Code 19130.

The State Constitution generally requires contracting to be limited to those services that cannot be performed by civil service employees except provided for in GC 19130 (a) and (b).

GC 19130(a) allows contracting out of services if the Department can clearly demonstrate that the proposed contract will result in actual overall cost savings to the State.

Standards for use of Personal Service Contracts

A "Personal Service contract" is defined as any contract, requisition, Purchase Order, etc. (except Public Works contracts), under which labor or personal services is a significant, separately identifiable element. The business or person performing these contractual services must be an Independent Contractor and does not have status as an employee of the State. A "cost savings-based Personal Service Contract" is any Personal Service Contract proposed to achieve cost savings and subject to the provisions of Government Code, Section 19130(a).

Before deciding to contract for personal services, as a requestor or initiator of a contract, you must meet one of the following criteria and provide justification to support the selection:

1. 19130(a) Personal services contracting is permissible to achieve cost savings when specific conditions are met. This would require an 11-Point Analysis as required by law for State Personnel Board approval and union review. (This may add an additional 30 - 60 days to the contract process.);

OR

2. 19130(b): Personal services contracting also shall be permissible when any of the following conditions can be met:
 - A.** The functions contracted are exempted from civil service by Section 4 of Article VII of the California Constitution, which describes exempt appointments.
 - B.** The contract is for a new state function and the Legislature has specifically mandated or authorized the performance of the work by Independent Contractors.
 - C.** The services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical

nature that the necessary expert knowledge, experience, and ability are not available through the civil service system.

D. The services are incidental to a contract for the purchase or leases of real or personal property. Contracts under this criterion, known as service agreements," shall include, but not be limited to, agreements to service or maintain office equipment or computers that are leased or rented.

E. The legislative, administrative, or legal goals and purposes cannot be accomplished through the utilization of persons selected pursuant to the regular civil service system. Contracts are permissible under this criterion to protect against a conflict of interests or to insure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. These contracts shall include, but not be limited to, obtaining expert witnesses in litigation.

F. The nature of the work is such that the Government Code standards for emergency appointments apply. These contracts shall conform with Article 8 (commencing with Section 19888) of Chapter 2.5 or Part 2.6.

G. State agencies need private counsel because a conflict of interest on the part of the Attorney General's office prevents it from representing the agency without compromising its position. These contracts shall require the written consent of the Attorney General, pursuant to Section 11040.

H. The Contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the state in the location where the services are to be performed.

I. The Contractor will conduct training courses for which appropriately qualified civil service instructors are not available, provided that permanent instructor positions in academies or similar settings shall be filled through civil service appointment.

J. The services are of such of an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil services would frustrate their very purpose.

***Justification Detail Required (Please explain why the above condition applies)

What to Include in a Scope of Work (SOW)

According to the standard contracting format established by DGS, the SOW is specified as Exhibit A in the majority of state contracts. The SOW is a description of the services and work to be performed.

It can be as brief as a paragraph or two, or as lengthy as a book, depending on the type of services and the level of understanding and agreement.

At a minimum and if applicable, the SOW should address the following:

1. Work specifications, requirements
2. Detailed work plan
3. Personnel, staffing
4. Objectives, major task
5. Results, deliverables
6. Timelines, progress reports
7. Evaluation and acceptance criteria

The Scope of Work should contain a clear, precise description of the work to be performed, services to be provided, problem to be solved, or the goals and objectives to be met as follows:

- Describe in realistic terms what the Contractor is to accomplish, including any desired approach to the problem and the specific functions, tasks, or activities that must be performed.
- Identify any practical and policy information, technological requirements or specifications, and legal limitations if any.
- Identify the specific questions to be answered or issues to be addressed.
- Define the manner in which the work is to be done.
- Describe the items to be delivered.
- Specify time schedules, including dates for commencement of performance and submission of progress reports, if any, and date of completion.
- Specify final meeting requirements between Contractor and CDSS when the contractor is to present his/her findings, conclusions, and recommendations (if applicable)
- Specify the format and number of copies to be made of the completed reports or product.
- Describe method of delivery and evaluation criteria for acceptance of service or product.

What to Include in a Budget

The budget format will differ according to the type of contract. The standard budget formats are:

- Lump sum payment upon completion, delivery, and acceptance of service.

- Deliverable-based, i.e., Upon completion of each training session at the contracted rate of \$5,000 per session.
- Monthly reimbursement of services, i.e., \$600 per month for janitorial services or \$50 per month for security alarm maintenance.
- Identification of the consultant(s), classification level and hourly rate of pay, up to the maximum amount of the contract or maximum number of hours within the contract period.
- Detailed line item budget showing personnel detail (names, job titles, monthly rate, percentage of time charged to the contract and employee benefits); operating and equipment expenses (rent, telephone, supplies, etc.) and indirect cost. Detailed line item budgets must include a narrative describing each line item.

***See Attachment 1 for SAMPLE contract agreement

CONTRACT REVIEW PROCESS and TIMEFRAMES

Upon completion of a GEN 704, Request for Contract Services, the following actions take place:

1. Preliminary Review by Deputy Director for Local Area Offices – (5 to 10 working days)
Deputy shall review all proposed solicitation documents and timelines for compliance with State Contracting Manual. Once the review is complete, the Deputy of LAO signs and forwards the proposed contract to the Deputy Director of Administration for secondary review.
2. The Deputy of Administration will review all financial documents and assure compliance with State Administration Manual and Department of Finance protocols. Once the review is complete, the Deputy for Administration signs and includes the completed contract packet for review and approval at the next Administrative Committee or Program Development Committee (as appropriate.) The Chairperson of appropriate committee shall sign and certify that a full review and action has been taken to approve the contract.
3. The Deputy for Administration submits the complete solicitation package and approvals to full Council for review and final approval.
4. Once the solicitation package is approved by the full Council, advertising and/or bidding process may commence in accordance with the outlined process below depending on type of contract.

Please note: Contracts Analyst does not start writing the contract until full Council approval is obtained.

5. If the scope of work (SOW) and budget information are provided with the GEN 704, the Contracts Analyst will write the contract (5 to 10 working days)
If the SOW and budget information are insufficient, the Contracts Analyst will contact the submitter for additional information.

6. A draft of the contract is sent to the following for concurrent review. The specific reviews are determined by the type of service and amount of funds. (5 to 20 working days)
 - Budget Officer (only contracts containing more than \$20,000 per fiscal year).
 - Budget Officer signs the "Agreement/Summary" (STD215) and attaches funding information on the form
 - Legal Counsel
7. Contract is finalized and sent to Contractor for signature (3 to 10 working days)
8. Contract is signed and returned to SCDD (10 to 20 working days)
9. Once the Contractor's signature has been obtained, the contract is prepared for SCDD Executive Director signature. (3 to 10 working days)
10. If Department of General Services (DGS) review is not required, the contract is fully executed upon CDSS signature. Copies of the executed contract are distributed by the Contracts Analyst.

The following contracts require DGS review and approval: (add 5 to 10 working days)

- Standard Agreements and Interagency Agreements for \$50,000 and above
 - Contracts that limit the contractor's liabilities or require the State to indemnify or to hold the contractor harmless.
 - Contracts that provide for advance payment for services.
 - Any contract containing hazardous activities that may result in substantial risk of serious injury to persons or damage to property, such as transporting of persons by any mode of transportation (also requires automobile and public liability insurance)
11. Upon receipt of the approved contract from DGS, the Contracts Analyst notifies Program and Contractor of execution by sending out copies of the executed contract. (2 to 5 working days)

VARIOUS COMPONENTS OF THE BIDDING PROCESS

A. *Types of Bidding Processes*

The most frequently used types of bidding process in SCDD are the Request for Proposals (RFP) Primary and RFP Secondary and Master Agreements. However, other processes may be used as follows:

1. Request for Proposals (RFP)

The RFP is used to obtain complex services in which professional expertise is needed and bidders may utilize different methods and approaches during performance. Services may be complex, uncommon and/or unique.

An RFP seeks an answer to the following: "Here is what we wish to accomplish. Here are the qualification requirements, performance specifications, time frames, and other requirements that must be met. Describe how you would accomplish the job for us and for how much."

There are two types of RFPs:

RFP Primary and RFP Secondary - The major difference between the two is the way in which the winner is determined. In the RFP Primary, the contract is awarded to the responsible bidder with the lowest costs. In the RFP Secondary, the contract is awarded to the responsible bidder with the highest scored proposal.

a. RFP Primary

Bidders responding to the RFP Primary must submit their information in two envelopes. The written proposal describing the services and how they will be delivered will be placed in one envelope and the costs for providing the services must be sealed in a separate envelope. The sealed bids will be publicly opened at a later date.

Upon receipt of proposals, the Contracts Analyst will conduct an administrative review to determine if the proposals conform with the format and content requirements specified in the RFP, such as a table of contents, the correct number

of copies, a signed Statement of Intent to Meet RFP Requirements, etc. The Contracts Analyst will also check that the costs information is sealed in a separate envelope. Failure to meet administrative requirements will deem the proposal to be nonresponsive to RFP requirements and disqualified for further consideration.

Proposals meeting administrative requirements are given to the Evaluation Committee for scoring. The Program Development Committee or Administrative Committee, as appropriate, shall serve as the Evaluation Committee in accordance with these policies. The Evaluation Committee will compare the proposals and bidders for conformance to RFP requirements such as minimum experience, professional qualifications, organizational structure, staffing and expertise, service methodology, timeframes, etc., and assign a score for each category. As stated in the RFP, proposals must obtain a minimum score, usually 80 percent, from the Evaluation Committee in order to qualify for the bid opening. All proposals with a score of 80 percent or higher will have their sealed bid publicly opened at the time and place specified in the RFP. The responsible bidder with the lowest costs will be awarded the contract, regardless of the score given by the Evaluation Committee on the proposal.

b. RFP Secondary

The RFP Secondary asks Bidders to submit all their information in one package. There is no need for a separate envelope shielding the costs information since there is no public bid opening.

The Contracts Analyst conducts an administrative review of all proposals received for responsiveness to RFP format and content requirements and gives them to the Evaluation Committee. The Evaluation Committee shall be the Program Developmental Committee or the Administrative Committee, as appropriate. The Evaluation Committee will compare the proposals and bidders for conformance to other RFP requirements such as minimum experience, professional qualifications, organizational structure, staffing and expertise, service methodology, timeframes, etc., and assign a score to each category. The costs for services are also scored in accordance with the formula specified in the RFP. Upon completion of the evaluation process, the contract is awarded to the bidder with the highest scored proposal.

2. Solicitation for Offers (SFO)

The SFO is used to obtain services off the California Multiple Award Schedules (CMAS). CMAS vendors have been preapproved by the Procurement Division of the Department of General Services and may be utilized by state agencies without formal bids. For vendor listings, see: www.pd.dgs.ca.gov

SCDD may issue a SFO that specifies the minimum service requirements and what information the CMAS vendor must provide for consideration of contract award. Typically, the CMAS vendor submits a narrative describing their qualifications, what services they will provide, along with the personnel and corresponding hourly rates.

For SFO's, the award is determined by "best value". Depending on the specific service being requested, "best value" can be defined as either lowest price or highest scored offer received. The decision must be clearly identified in the SFO.

3. Invitation for Bids (IFB)

The IFB is typically used to obtain simple, common, or routine services that may require personal or mechanical skills. An IFB seeks an answer to the following: "Here is exactly what we need to have done. Here are the qualification requirements, performance specifications, time frames, and requirements that must be met. How much will you charge us?"

Examples of services utilizing the IFB process are janitorial and moving services.

The bidder specifies the costs for the requested services on the Bid Form, which is included in the IFB. Bidder signs and returns the Bid Form to Contracts Analyst in a sealed envelope by the due date stated in the IFB. Sealed bids are then publicly opened on the due date and a pass or fail determination is made by the Contracts Analyst for responsiveness to IFB requirements. For example, if the IFB specifies a minimum number of years experience providing a particular service, the bidder must have that experience in order to qualify for the bid opening. The award is then made to the responsible bidder with the lowest costs.

4. Master Agreements

Master Agreements (also referred to as Master Service Agreements) are generally Statewide agreements that have been competitively bid and awarded by DGS. Master Agreements may be for IT Services and Non-IT

Services. Each Master Agreement has its own ordering instructions and administrative fee (usually 1 to 2%). Additional information is available on the Department of General Services, Procurement Division website at www.pd.dgs.ca.gov/masters/.

Examples of services available under Master Agreements include unarmed security guards and business and management consulting services such as organization development, strategic planning, and performance measurements and evaluation.

B. *Fundamental Rules for Competitive Bids*

1. A State Agency may not draft any competitive bidding document in a manner that limits bidding directly or indirectly to any one bidder. (Public Contract Code Section 10339)
2. Services may not be split to avoid the need to advertise or obtain competitive bids. In particular, a series of related services that would normally be combined and bid as one job cannot be split into separate tasks, steps, phases, locations, or delivery times to avoid adhering to a state law, policy, or departmental procedure.
3. Sealed bids (and proposals, etc.) must be received by the time stated in the solicitation document. Bids received after the due date and time are not valid regardless of the circumstances causing the late submittal. If you receive a package requested by a solicitation document, please get it to the Contracts Analyst immediately.

C. *Noncompetitively Bid (NCB) Contract*

1. A noncompetitively bid contract is defined as one in which only a single business enterprise is afforded the opportunity to provide the specified services and the typical solicitation processes were not utilized. NCB Transactions of \$5,000 or more must be approved by the Executive Director, the full Council and, the Procurement Division of the Department of General Services (DGS). These approvals must be formally obtained and provided in writing before the contract is developed. For services under \$5,000, no NCB justification is required if fair and reasonable pricing has been established and documented. An NCB justification is required if fair and reasonable pricing cannot be established and documented or two bids cannot be obtained.
2. Approvals for an NCB contract transaction require the following documents:
 - Noncompetitively Bid Contract Justification (three page document from DGS), and
 - Request for Exemption from Advertising (form STD. 821).

3. At a minimum, the following questions must be addressed in the documents specified in #2 above:
- Why is the requested service restricted to one supplier? Explain why the acquisition was not competitively bid.
 - Provide the background of events leading to this acquisition. Describe the uniqueness of the acquisition (why was the good/service/supplier or contractor chosen?)
 - What are the consequences of not purchasing the good/service or contracting with the proposed supplier?
 - What market research was conducted to substantiate noncompetition, including evaluation of other items considered?
 - How was the price offered or costs for services determined to be fair and reasonable? Describe any cost savings realized or costs avoided by acquiring goods/services from this supplier.
 - If the NCB request could have been competitively bid but was not due to insufficient time to complete the acquisition process, DGS requires a corrective action plan from the SCDD describing how competitive bids and processing of contracts will be managed.

APPLY APPROPRIATE REGULATIONS AND POLICIES

Disabled Veteran Business Enterprise (DVBE) and Small Business (SB) and Microbusiness (MB) Participation Programs

There are two business enterprise participation programs with which we must interact: Disabled Veteran Business Enterprise (DVBE)

and Small Business (SB) and Microbusiness (MB) Enterprise. State agencies are measured on how well they achieve the mandated goals.

1. DVBE Program

The State of California established the DVBE Participation Program as one way to acknowledge disabled veterans for their service. The intent of the program is to further DVBE participation in State contracting by establishing a DVBE participation goal of at least 3% to ensure a portion of the state's overall annual contract dollars are awarded to certified DVBEs. For more information on the DVBE Program, visit the Internet site at <http://www.pd.dgs.ca.gov/dvbe>

Every year, State agencies are required to submit a report to the Department of General Services on the total dollar amount of purchases and contract awards to businesses and the portion of those awards given to certified DVBEs.

2. Small Business (SB) and Microbusiness (MB) Program

Through the enactment of the Small Business Procurement and Contract Act, a fair portion of the total State purchases, contracts, and subcontracts for commodities and services must be placed with certified small businesses or microbusinesses.

State Agencies have a SB/MB participation goal of 25 percent of the total dollar amount expended annually on purchase and contract awards.

A certified small business or microbusiness or a non-small business who subcontracts with a certified SB/MB firm is entitled to claim a five percent preference in bidding on procurements of goods or services. The five percent preference is used only for computation of the bid amount to determine the winning bidder and does not alter the actual amount of its bid.

PROGRAM RESPONSIBILITIES AFTER CONTRACT EXECUTION

The Contract Manager is the authorized SCDD representative (within the Program initiating the contract request) responsible for administering the contract and monitoring the Contractor's performance and includes the following responsibilities:

A. *Typical responsibilities*

1. After contract is executed, notify Contractor to begin work.
2. Monitor progress of work to ensure that services are performed according to the quality, quantity, objectives, timeframes, and manner specified in the contract; e.g., review progress reports and interim products.
3. Ensure that all work is completed and accepted before the contract expires.
4. Review invoices to substantiate expenditures for work performed prior to approving them. Ensure the invoice contains the contract number, index and PCA codes and is forwarded for payment in a timely manner.
5. Ensure that there are sufficient funds to pay for all services rendered as required by contract. Also ensure that funds are available if there is a change in the funding source specified in the contract.
6. Identify low spending levels and consider partial disencumbrance and reassignment of funds.
7. Notify appropriate SCDD personnel of equipment purchase, if applicable, and ensure property is tagged and inventoried before approving cost reimbursement.
8. Monitor use of Disabled Veteran Business Enterprises (DVBE) subcontractors to ensure attainment of approved contract participation goals.
9. Verify that the Contractor has fulfilled all requirements of the contract before approving the final invoice. The final invoice must include the statement "Final Billing".
10. Invoices must be received by SCDD within 90 days following each state fiscal year, or 90 days following the end of the contract term, whichever comes first.

11. Only for consulting services contracts of \$5,000 or more, complete the Contractor Evaluation form (STD.4) within 60 days of expiration of term.
12. Contact the Contracts Analyst for assistance with contract problems.

B. *Contract Manager "Don'ts"*

The Contract Manager is **not** authorized to take the following actions:

1. Do not instruct the Contractor to start work before the contract is executed and approved.
2. Do not informally change the description or scope of work of the contract without an amendment.
3. Do not direct Contractor to do work that is not specifically described in the contract.
4. Do not sign any Contractor's contract form (their version of an agreement).
5. Do not approve payment to Contractor for any work not performed or performed unsatisfactorily.
6. Do not extend the time period of the contract without an amendment.
7. Do not allow Contractor to incur costs over the amount set in the contract.

C. *Retention of Contract Records*

All contracts involving expenditures of public funds in excess of \$10,000 contain a provision that the contract is subject to the examination and audit of the awarding department or its delegate or the State Auditor for a period of three years after final payment under the agreement. Federally funded contracts have a record retention period of up to five years. When a contract audit is in dispute or litigation, the record retention period is extended.

D. *Record Keeping*

1. Label a file folder for each contract administered and include the following:
 - a. A log sheet to record any activities related to the contract. Each time you speak with anyone about the contract, make a note of the date of the discussion, and the subject matter discussed.

- b. A file guide labeled "Invoices." Retain a copy of all invoices in this file guide.
 - c. A copy of the executed contract and other pertinent documentation, such as a copy of the original contract request and any correspondence related to the contract or contractor.
- 2. Prepare a spreadsheet of expenditures showing the contract amount encumbered and the deduction for each invoice as it is approved for payment.
- 3. Document the notification to the Contractor of the start date. Work cannot begin before contract execution and the effective date of the contract. Although initial notification to start work may be verbal, it should also be documented in writing and a copy placed in the file. This practice protects the agency and the Contract Manager in the event of legal problems or an audit.
- 4. Monitor and document the performance and nonperformance of contract services in the contract file. If problems are encountered during the contract term, they should be fully documented. Letters to contractors should outline any problems related to substandard or nonperformance. If applicable, use contract specifications verbatim in the letters so that there is no doubt about the services covered in the contract. All letters about nonperformance should be sent by certified mail with copies to all concerned parties. A copy of the letter should be sent to the appropriate payment unit to eliminate the possibility of erroneous invoice payment.

E. *Oversee the completion of the contract*

To finalize or complete the contract process, contact Contractor to determine whether all invoices have been received. After the expiration of the contract, disencumber any remaining funds by notifying the appropriate payment unit at CDSS and the Contracts Analyst of the amount to be disencumbered. A copy should be retained in the contract file. Please note that if the term has not expired and the contract is still in force, any reduction of funds must be made by contract amendment.

F. *Terminate and/or Disencumber a Contract*

1. A contract may be terminated prior to the end (expiration date) of the term by sending a letter to the Contractor at least 30 days in advance of the effective date of termination.

All contracts contain a provision that permits SCDD to terminate the contract without cause provided adequate notice is given. The termination letter should be signed by the Executive Director and sent to the Contractor by certified mail. Upon release of the termination letter, Contract Manager will send a notice to the requesting program, CDSS Budget Bureau informing them of the termination and to request disencumbrance of funds. No amendment is necessary for terminating contracts.

2. If a contract has already expired, program should send a memo to CDSS Budget Bureau to request the disencumbrance of funds by identifying the contract number and the amount of funds to be disencumbered. The effective date for disencumbrance is the contract expiration date. No amendment is required.

G. Contractor Evaluation

Any consultant services contract of \$5,000 or more requires completion of a Contract/Contractor Evaluation (STD.4) within 60 days after completion of a contract. When a negative finding is made, the Contracts will forward a copy to the Department of General Services and the Contractor within five days of completion of the evaluation.

Contract/Contractor Evaluation forms are not public documents and should not be kept in the contract file.